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THE

Charters and General Laws

OF

THE COLONY AND PROVINCE

OF

MASSACHUSETTS BAY.

CAREFULLY COLLECTED FROM THE PUBLICK RECORDS AND ANCIENT PRINTED BOOKS.

TO WHICH IS ADDED

AN APPENDIX,

TENDING TO EXPLAIN THE SPIRIT, PROGRESS AND HISTORY OF THE JURISPRUDENCE OF THE STATE; ESPECIALLY IN A MORAL AND POLITICAL VIEW.

PUBLISHED BY ORDER OF THE GENERAL COURT.

BOSTON:

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1814.

COMMONWEALTH OF MASSACHUSETTS.

In the House of Representatives, January 15th, 1812.

Resolved, That the Honourable Nathan Dane, William Prescott, and Joseph Story, Esquires, be a committee, at the expense of the commonwealth, to collect the Charters and the publick and general Laws of the late colony and province of Massachusetts Bay; and that the said committee be and they are hereby authorized, when the same Laws and Charters shall be collected as aforesaid, to cause five hundred copies* thereof to be printed at the expense of and for the use of this commonwealth, in a volume of the royal octavo size, with suitable title pages, running titles, and analytical indexes. And the said committee are hereby further authorized to add in an appendix any other documents or laws which they may deem proper to explain the jurisprudence of this commonwealth And that the said committee be required to proceed as soon as conveniently may be in the execution of the purposes of this resolve.

And be it further resolved, that the said committee, after they shall have collected and examined the same laws, report to the legislature such laws as are not repealed, and which in their opinion require to be repealed.

* By a resolve passed June 11, 1813, this number was increased to one thousand.

THE UTILITY AND ADVANTAGES OF THIS WORK.

THE Statutes of the late colony and province of Massachusetts have of late years become unusually scarce. Of the former no edition has been published since the year 1672; and though of the latter numerous editions have been at successive periods published, yet no edition is known to have comprehended a complete series of the publick statutes from the charter, in 1692, to the time of the revolution.

The sixth article of the sixth chapter of the constitution declares, "that the laws which have heretofore been adopted, used, and approved in the province, colony, or state of Massachusetts, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature, such parts only excepted as are repugnant to the rights and liberties contained in this constitution."

Of these statutes there has been no general repeal; but several of them remain in force; and in the cases of repealed acts, many are the uses to which they may be applied:

1. They decide upon all rights and titles, which vested at the time they were in operation. Such rights and titles may now come in question in trials at law, and can be correctly ascertained only by a recurrence to the statutes, which governed at the time when they accrued. For instance, the validity of sales of land by executors and administrators, and of the setting off of the same upon execution, must be ascertained by an examination of the laws in force at the time when the facts happened.

2. Former statutes upon the same subject matter often assist materially in the construction of later statutes. Instances of this kind are familiar to lawyers. One may not be uninteresting. The statute of February 6, 1784,

s. 8. which gave a share in the estate of a deceased parent to children, or their legal representatives, where such children or their representatives had no legacy in the will of the parent, is substantially like the provincial statute of 12 William III. ch. 7; and although the preamble of the latter is omitted, yet upon sound construction it has been held, that the statute of 1784 was not intended to extend to cases where the children, &c. were mentioned in the will, although no legacy were given to them, because the preamble to the statute of William III. shews that such cases were not within the mischiefs intended to be remedied.

3. A collection of the ancient statutes is important to shew the history and spirit of the times, and the gradual and progressive improvements in legislation. This cannot be a matter of indifference to any portion of the community, and is peculiarly interesting to those who, as legislators, are to guard the publick rights and preserve the publick happiness.

4. Experience has shewn not only the use but the necessity of collecting these laws now existing in many volumes, and to be obtained but by very few.

When the edition of the statutes of the commonwealth of Massachusetts, of a publick nature, was published in the year 1801, as it was then an object to save expense, it was thought sufficient to publish, in the appendix, the Colony and Province Statutes, and parts of statutes of a publick nature, not then revised; and those also, that respected titles to real estates. But experience has since proved, that a much more ample collection of those Colony and Province Acts is useful and necessary. And it has been found necessary, in a multitude of cases which have come under the consideration of the Court and Bar, to have recourse to those more ancient statutes, not only as applicable to facts which happened in the time of the Colony or Province, and now making part of the case before the court, or on which counsel must advise, but as very material in aiding in the construction of the revised laws; as will be seen on a careful reading of the Massachusetts Reports, and observed by every lawyer of experience, to whom several other reasons will occur for this publication.

ADVERTISEMENT.

In forming this volume, the committee preferred the *chronological* order, and have adopted it in regard to the laws of the province, but found it impracticable to pursue it in respect to the colony laws. These had been several times revised and printed; the last edition the committee could find was in the year 1672; this included the edition of 1658, as it was then formed, nearly. Many of the acts and orders published in these editions are without dates, and the dates of a number of them cannot now be found. These editions were in the *digest* form; and if the dates of the laws in them, or the times when they were passed, could now be ascertained, a question would arise respecting them, because the general court, in each material revision, authorized the committee, appointed to collect and print the laws, to make verbal alterations in them. For instance, October 27, 1647, it ordered and enacted thus—"the laws being to be put in print, it is meet they should be conveniently penned, therefore, it is desired that the committee for drawing up the laws will be careful therein; and to that purpose they have liberty to make some change of form, to put in apt words, as occasion may require, provided the sense and meaning in any law or part thereof be not changed;" and the same day the general court directed the committee to leave wide margins for references to scripture; and October, 19th, 1658, it ordered and enacted "that the book of laws, as they have been revised and corrected, and put into form by the order of this court, together with the alterations and additions

hereunto expressed, shall forthwith be printed and be in force in one month after the same." Accordingly, the committee which digested the laws in 1658, made many alterations, mostly merely in the modes of expression; but sometimes they formed several acts on the same subject, of different dates, into one, much abridged in words at least: For instance, three acts were passed in 1633, 1642, and 1644, respecting certain material powers in the general court; these acts the committee in 1658 abridged, preserving the sense and meaning, and formed into one section; and so in other cases. Finding this to be the state of the colony laws down to 1672, the committee in forming this volume did not judge it proper to bring into it the original acts where they were thus altered, because in 1658 the legislature declared the book or code then formed to be law, making it the law of the land, as the committee published it, and so sanctioning the variations from the original acts, as far as there were any. In the same manner must be viewed the many texts of scripture added by the committee in 1658 and 1672, at the ends or in the margins of many of the acts and orders; and hence it is they are still preserved; but very few of these are found in the original records of the laws. The edition of 1672 appears to be but little more than an extension of that of 1658.

The colony laws passed between 1672 and the charter of William and Mary, and included in this volume, were found in the original records, and might have been published in chronological order, but on inspection they were found to be, generally, *in addition* to the former colony acts, and so properly to be incorporated with them in their *digest* form, noting, however, in every case, the date. In the printed colony laws, the committee found the dates, or the times when passed, imperfectly expressed, as in no case scarcely the day or month, and in many cases no date. This defect they have attempted to remedy as far as they could by

adding the dates in sundry cases; and whenever the month is added in the dates, it has been by their having recourse to the publick records.

In the revisions in 1672, and before, the time of passing or of revising many of these colony acts was briefly noted in the margin, or at the end of an act, as "A. 46" for A. D. 1646, &c. these are preserved in the volume for the reasons above, and because also sometimes useful references.

A number of colony acts of importance, especially in a historical view of our laws, have been found in the original records, not included in the edition of 1672; these have been selected and printed in this volume wherever found to have remained a material part of the colonial system.

N. B. The temporary acts published in this edition, it will appear, were continued down till generally revised in the revision of the laws since the year 1780; the intermediate periods of continuance of them will appear in the reviving acts, also published in this edition generally.

Note further. When the time an act was passed is expressed at the close of the title, it means the day the general court met in the session, or on the adjournment at which the same statute was enacted, it often being found impracticable to find the particular day on which it was in fact enacted.

THE CHARTER

OF

THE COLONY OF MASSACHUSETTS BAY.

1628.

CHARLES, BY THE GRACE OF GOD, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To all to whom these presents shall come, Greeting. *Whereas*, our most dear and royal father, king James, of blessed memory, by his Highness letters-patent bearing date at Westminster, the third day of November, in the eighteenth year of his reign, hath given and granted unto the Council established at Plymouth, in the county of Devon, for the planting, ruling, ordering, and governing of New England in America, and to their successors and assigns for ever, all that part of America, lying and being in breadth, from forty degrees of northerly latitude from the equinoctial line, to forty-eight degrees of the said northerly latitude inclusively, and in length, of and within all the breadth aforesaid, throughout the main lands from sea to sea; together also with all the firm lands, soils, grounds, havens, ports, rivers, waters, fishing, mines, and minerals, as well royal mines of gold and silver, as other mines and minerals, precious stones, quarries, and all and singular other commodities, jurisdictions, royalties, privileges, franchises, and preeminences, both within the said tract of land upon the main, and also within the islands and seas adjoining: *Provided* always, That the said islands, or any the premises by the said letters-patent intended and meant to be granted, were not then actually possessed or inhabited by any other christian prince or state, nor within the bounds, limits, or territories of the southern colony, then before granted by our said dear Father, to be planted by divers of his loving subjects in the south parts. To have and to hold, possess and enjoy all and singular the aforesaid continent, lands, territories, islands, hereditaments, and precincts, seas, waters, fishings, with all, and all manner their commodities, royalties, liberties, preeminences, and profits that should from thenceforth

arise from thence, with all and singular their appurtenances, and every part and parcel thereof, unto the said council and their successors and assigns for ever, to the sole and proper use, benefit, and behoof of them the said council, and their successors and assigns for ever: To be holden of our said most dear and royal father, his heirs and successors, as of his manor of East-Greenwich in the county of Kent, in free and common soccage, and not in capite nor by knight's service: Yielding and paying therefor to the said late king, his heirs and successors, the fifth part of the ore of gold and silver, which should from time to time, and at all times then after happen to be found, gotten, had, and obtained in, at, or within any of the said lands, limits, territories, and precincts, or in or within any part or parcel thereof, for or in respect of all and all manner of duties, demands and services whatsoever, to be done, made, or paid to our said dear father the late king, his heirs and successors, as in and by the said letters-patent (amongst sundry other clauses, powers, privileges, and grants therein contained,) more at large appeareth: And whereas, the said council established at Plymouth, in the county of Devon, for the planting, ruling, ordering, and governing of New England in America, have by their deed indented, under their common seal, bearing date the nineteenth day of March last past, in the third year of our reign, given, granted, bargained, sold, enfeoffed, aliened, and confirmed to Sir Henry Rosewell, Sir John Young, Knights, Thomas Southcott, John Humphrey, John Endecott, and Simon Whetcombe, their heirs and assigns, and their associates for ever, all that part of New England in America aforesaid, which lies and extends between a great river there, commonly called Monomack, alias Merrimack, and a certain other river there, called Charles river, being in the bottom of a certain bay there, commonly called Massachusetts, alias Mattachusetts, alias Massatusetts bay, and also all and singular those lands and hereditaments whatsoever, lying within the space of three English miles on the south part of the said Charles river, or of any, or every part thereof; and also all and singular the lands and hereditaments whatsoever, lying and being within the space of three English miles to the southward of the southernmost part of the said bay called Massachusetts, alias Mattachusetts, alias Massatusetts bay; and also all those lands and hereditaments whatsoever, which lie, and be within the space of three English miles to the northward of the said river called Monomack, alias Merrimack, or to the northward of any and every part thereof, and all lands and hereditaments whatsoever, lying within the limits aforesaid, north and south in latitude and breadth, and in length and longitude, of and within all the breadth aforesaid, throughout the main lands there, from the Atlantic and western sea and ocean on the east part, to the south sea on the west

part; and all lands and grounds, place and places, soils, woods and wood grounds, havens, ports, rivers, waters, fishings, and hereditaments whatsoever, lying within the said bounds and limits, and every part and parcel thereof; and also all islands lying in America aforesaid, in the said seas or either of them on the western or eastern coasts or parts of the said tracts of land, by the said indenture mentioned to be given, granted, bargained, sold, enfeoffed, aliened, and confirmed, or any of them; and also all mines and minerals, as well royal mines of gold and silver, as other mines and minerals whatsoever, in the said lands and premises, or any part thereof; and all jurisdictions, rights, royalties, liberties, freedoms, immunities, privileges, franchises, preeminences, and commodities whatsoever, which they, the said council established at Plymouth, in the county of Devon, for the planting, ruling, ordering, and governing of New England in America, then had, or might use, exercise, or enjoy, in or within the said lands and premises by the said indenture mentioned to be given, granted, bargained, sold, enfeoffed, and confirmed, or in, or within any part or parcel thereof: To have and to hold, the said part of New England in America, which lies and extends and is abutted as aforesaid, and every part and parcel thereof; and all the said islands, rivers, ports, havens, waters, fishings, mines, minerals, jurisdictions, franchises, royalties, liberties, privileges, commodities, hereditaments, and premises whatsoever, with the appurtenances unto the said Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, their heirs and assigns, and their associates, to the only proper and absolute use and behoof of the said Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, their heirs and assigns, and their associates for ever more; To be holden of us, our heirs and successors, as of our manor of East-Greenwich, in the county of Kent, in free and common soccage, and not in capite, nor by knight's service; Yielding and paying therefor unto us, our heirs and successors, the fifth part of the ore of gold and silver, which shall from time to time, and at all times hereafter, happen to be found, gotten, had, and obtained in any of the said lands, within the said limits, or in or within any part thereof, for, and in satisfaction of all manner duties, demands, and services whatsoever to be done, made, or paid to us, our heirs or successors, as in and by the said recited indenture more at large may appear. Now know ye, that we, at the humble suit and petition of the said Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, and of others whom they have associated unto them, Have, for divers good causes and considerations, us moving, granted and confirmed, and by these presents of our especial

grace, certain knowledge, and mere motion, do grant and confirm unto the said Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, and to their associates hereafter named; (videlicet) Sir Richard Saltonstall, Knight, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their heirs and assigns, all the said part of New England in America, lying and extending between the bounds and limits in the said recited indenture expressed, and all lands and grounds, place and places, soils, woods and wood grounds, havens, ports, rivers, waters, mines, minerals, jurisdictions, rights, royalties, liberties, freedoms, immunities, privileges, franchises, preeminences, hereditaments, and commodities whatsoever, to them the said Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, their heirs and assigns, and to their associates, by the said recited indenture, given, granted, bargained, sold, enfeoffed, aliened, and confirmed, or mentioned, or intended thereby to be given, granted, bargained, sold, enfeoffed, aliened, and confirmed: To have and to hold, the said part of New England in America, and other the premises hereby mentioned to be granted and confirmed, and every part and parcel thereof with the appurtenances, to the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaac Johnson, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Increase Nowell, William Vassall, William Pinchion, and George Foxcrofte, their heirs and assigns for ever, to their only proper and absolute use and behoof for evermore; To be holden of us, our heirs and successors, as of our manor of East-Greenwich aforesaid, in free and common soccage, and not in capite, nor by knight's service; And also yielding and paying therefor to us, our heirs and successors, the fifth part only of all ore of gold and silver, which from time to time, and at all times hereafter shall be there gotten, had, or obtained, for all services, exactions and demands whatsoever, according to the tenure and reservation in the said recited indenture expressed. And further, know ye, that of our more especial grace, certain knowledge, and mere motion, We have given and granted, and by these presents, do for us, our heirs and successors, give and grant unto the said Sir Henry Rosewell, Sir John Younge,

Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their heirs and assigns, all that part of New-England in America, which lies and extends between a great river there, commonly called Monomack river, alias Merrimack river, and a certain other river there, called Charles river, being in the bottom of a certain bay there, commonly called Massachusetts, alias Mattachusetts, alias Massatusetts Bay; and also all and singular those lands and hereditaments whatsoever, lying within the space of three English miles on the south part of the said river, called Charles river, or of any or every part thereof; and also all and singular the lands and hereditaments whatsoever, lying and being within the space of three English miles to the southward of the southernmost part of the said bay, called Massachusetts, alias Mattachusetts, alias Massatusetts Bay: and also all those lands and hereditaments whatsoever, which lie and be within the space of three English miles to the northward of the said river, called Monomack, alias Merrimack, or to the northward of any and every part thereof, and all lands and hereditaments whatsoever, lying within the limits aforesaid, north and south in latitude and breadth, and in length and longitude, of and within all the breadth aforesaid, throughout the main lands there, from the Atlantic and western sea and ocean on the east part, to the south sea on the west part; and all lands and grounds, place and places, soils, woods, and wood-grounds, havens, ports, rivers, waters, and hereditaments whatsoever, lying within the said bounds and limits, and every part and parcel thereof; and also all islands in America aforesaid, in the said seas, or either of them, on the western or eastern coasts, or parts of the said tract of lands hereby mentioned to be given and granted, or any of them; and all mines and minerals, as well royal mines of gold and silver as other mines and minerals whatsoever, in the said lands or premises, or any part thereof, and free liberty of fishing in or within any the rivers or waters within the bounds and limits aforesaid, and the seas thereunto adjoining; and all fishes, royal fishes, whales, balan, sturgeons, and other fishes of what kind or nature soever, that shall at any time hereafter be taken in or within the said seas or waters, or any of them, by the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Increase Nowell, Ri-

chard Pery, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their heirs or assigns, or by any other person or persons whatsoever there inhabiting by them, or any of them, to be appointed to fish therein. Provided always, That if the said lands, islands, or any other the premises herein before mentioned, and by these presents intended and meant to be granted, were at the time of the granting of the said former letters-patent, dated the third day of November, in the eighteenth year of our said dear father's reign aforesaid, actually possessed or inhabited by any other christian prince or state, or were within the bounds, limits or territories of that southern colony, then before granted by our said late father, to be planted by divers of his loving subjects in the south parts of America, That then this present grant shall not extend to any such parts or parcels thereof, so formerly inhabited, or lying within the bounds of the southern plantation as aforesaid, but as to those parts or parcels so possessed or inhabited by such christian prince or state, or being within the bounds aforesaid shall be utterly void, these presents or any thing therein contained to the contrary notwithstanding. To have and to hold, possess and enjoy the said parts of New-England in America, which lie, extend, and are abutted as aforesaid, and every part or parcel thereof; and all the islands, rivers, ports, havens, waters, fishings, fishes, mines, minerals, jurisdictions, franchises, royalties, liberties, privileges, commodities, and premises whatsoever, with the appurtenances, unto the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their heirs and assigns for ever, to the only proper and absolute use and behoof of the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams. John Browne, Samuel Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their heirs and assigns for evermore: To be holden of us, our heirs and successors, as of our manor of East-Greenwich, in our county of Kent, within our realm of England, in free and common soccage,

and not in capite, nor by knight's service ; and also yielding and paying therefor to us, our heirs and successors, the fifth part only of all ore of gold and silver, which from time to time, and at all times hereafter, shall be there gotten, had, or obtained, for all services, exactions, and demands whatsoever ; Provided always, and our express will and meaning is, that only one fifth part of the gold and silver ore above mentioned, in the whole, and no more be reserved or payable unto us, our heirs and successors, by colour or virtue of these presents, the double reservations or rentals aforesaid, or any thing herein contained notwithstanding. And forasmuch, as the good and prosperous success of the plantation of the said parts of New England aforesaid intended by the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Inerease Nowell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, to be speedily set upon, cannot but chiefly depend, next under the blessing of Almighty God, and the support of our royal authority upon the good government of the same, To the end that the affairs and businesses which from time to time shall happen and arise concerning the said lands, and the plantation of the same may be the better managed and ordered, We have further hereby of our especial grace, certain knowledge and mere motion, given, granted and confirmed, and for us, our heirs and successors, do give, grant, and confirm unto our said trusty and well beloved subjects Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte : And for us, our heirs and successors, we will and ordain, that the said Sir Henry Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Increase Noell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, and all such others as shall hereafter be admitted and made free of the company and society here-

after mentioned, shall from time to time, and at all times for ever hereafter be, by virtue of these presents, one body corporate and politick in fact and name, by the name of the Governor and Company of the Mattachusetts Bay in New England, and them by the name of the Governor and Company of the Mattachusetts Bay in New England, one body politick and corporate, in deed, fact, and name; We do for us, our heirs and successors, make, ordain, constitute, and confirm by these presents, and by that name they shall have perpetual succession, and that by the same name they and their successors shall and may be capable and enabled as well to implead, and to be impleaded, and to prosecute, demand, and answer, and be answered unto, in all and singular suits, causes, quarrels, and actions, of what kind or nature soever. And also to have, take, possess, acquire, and purchase any lands, tenements, or hereditaments, or any goods or chattels, and the same to lease, grant, demise, alien, bargain, sell, and dispose of, as other our liege people of this our realm of England, or any other corporation or body politick of the same may lawfully do. And further, that the said governor and company, and their successors, may have forever one common seal, to be used in all causes and occasions of the said company, and the same seal may alter, change, break, and new make, from time to time at their pleasures. And our will and pleasure is, and we do hereby for us, our heirs and successors, ordain and grant, that from henceforth for ever, there shall be one Governor, one Deputy Governor, and eighteen Assistants of the same company, to be from time to time constituted, elected and chosen out of the freemen of the said company, for the time being, in such manner and form as hereafter in these presents is expressed, which said officers shall apply themselves to take care for the best disposing and ordering of the general business and affairs of, for, and concerning the said lands and premises hereby mentioned to be granted, and the plantation thereof, and the government of the people there. And for the better execution of our royal pleasure and grant in this behalf, we do, by these presents, for us, our heirs and successors, nominate, ordain, make, and constitute, our well beloved the said Matthew Cradock, to be the first and present Governor of the said company, and the said Thomas Goffe, to be Deputy Governor of the said company, and the said Sir Richard Saltonstall, Isaac Johnson, Samuel Aldersey, John Ven, John Humfrey, John Endecott, Simon Whetcombe, Increase Noell, Richard Pery, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Adams, Thomas Hutchins, John Browne, George Foxcrofte, William Vassall, and William Pinchion, to be the present Assistants of the said Company, to continue in the said several offices respectively for such time, and in such manner, as in and by these presents is hereafter

declared and appointed. And further, we will, and by these presents, for us, our heirs and successors, do ordain and grant, That the governor of the said company for the time being, or in his absence by occasion of sickness or otherwise, the deputy governor for the time being, shall have authority from time to time upon all occasions, to give order for the assembling of the said company, and calling them together to consult and advise of the businesses and affairs of the said company, and that the said governor, deputy governor, and assistants of the said company, for the time being, shall or may once every month, or oftener at their pleasures, assemble and hold and keep a court or assembly of themselves, for the better ordering and directing of their affairs, and that any seven or more persons of the assistants, together with the governor, or deputy governor so assembled, shall be said, taken, held, and reputed to be, and shall be a full and sufficient court or assembly of the said company, for the handling, ordering, and despatching of all such businesses and occurrences as shall from time to time happen, touching or concerning the said company or plantation; and that there shall or may be held and kept by the governor, or deputy governor of the said company, and seven or more of the said assistants for the time being, upon every last Wednesday in Hilary, Easter, Trinity, and Michas terms respectively for ever, one great general and solemn assembly, which four general assemblies shall be styled and called the four great and general courts of the said company; in all and every, or any of which said great and general courts so assembled, we do for us, our heirs and successors, give and grant to the said governor and company, and their successors, that the governor, or in his absence, the deputy governor of the said company for the time being, and such of the assistants and freemen of the said company as shall be present, or the greater number of them so assembled, whereof the governor or deputy governor and six of the assistants at the least to be seven, shall have full power and authority to choose, nominate, and appoint, such and so many others as they shall think fit, and that shall be willing to accept the same, to be free of the said company and body, and them into the same to admit; and to elect and constitute such officers as they shall think fit and requisite, for the ordering, managing, and despatching of the affairs of the said governor and company, and their successors; and to make laws and ordinances for the good and welfare of the said company, and for the government and ordering of the said lands and plantation, and the people inhabiting and to inhabit the same, as to them from time to time shall be thought meet, so as such laws and ordinances be not contrary or repugnant to the laws and statutes of this our realm of England. And our will and pleasure is, and we do hereby

for us, our heirs and successors, establish and ordain, that yearly, once in the year, for ever hereafter, namely, the last Wednesday in Easter term, yearly, the governor, deputy governor, and assistants of the said company and all other officers of the said company shall be, in the general court or assembly to be held for that day or time, newly chosen for the year ensuing by such greater part of the said company, for the time being, then and there present, as is aforesaid. And if it shall happen the present governor, deputy governor, and assistants, by these presents appointed, or such as shall hereafter be newly chosen into their rooms, or any of them, or any other of the officers to be appointed for the said company, to die, or to be removed from his or their several offices or places before the said general day of election (whom we do hereby declare for any misdemeanor or defect to be removeable by the governor, deputy governor, assistants, and company, or such greater part of them in any of the public courts to be assembled as is aforesaid) that then, and in every such case, it shall and may be lawful, to and for the governor, deputy governor, assistants, and company aforesaid, or such greater part of them so to be assembled as is aforesaid, in any of their assemblies, to proceed to a new election of one or more others of their company in the room or place, rooms or places of such officer or officers so dying or removed according to their discretions, and, immediately upon and after such election and elections made of such governor, deputy governor, assistant or assistants, or any other officer of the said company, in manner and form aforesaid, the authority, office, and power, before given to the former governor, deputy governor, or other officer and officers so removed, in whose stead and place new shall be so chosen, as to him and them, and every of them, cease and determine. Provided also, and our will and pleasure is, that as well such as are by these presents appointed to be the present governor, deputy governor, and assistants of the said company, as those that shall succeed them, and all other officers to be appointed and chosen as aforesaid, shall, before they undertake the execution of their said offices and places respectively, take their corporal oaths for the due and faithful performance of their duties in their several offices and places, before such person or persons as are by these presents hereunder appointed to take and receive the same; that is to say, the said Matthew Cradock, who is hereby nominated and appointed the present governor of the said company, shall take the said oaths before one or more of the masters of our court of chancery for the time being, unto which master or masters of the chancery, we do by these presents give full power and authority to take and administer the said oath to the said governor accordingly: and after the said governor shall be

so sworn, then the said deputy governor and assistants, before by these presents nominated and appointed, shall take the said several oaths to their offices and places respectively belonging, before the said Matthew Cradock, the present governor, so formerly sworn as aforesaid. And every such person as shall be at the time of the annual election, or otherwise, upon death or removal, be appointed to be the new governor of the said company, shall take the oaths to that place belonging, before the deputy governor, or two of the assistants of the said company at the least, for the time being: and the new elected deputy governor and assistants, and all other officers to be hereafter chosen as aforesaid from time to time, to take the oaths to their places respectively belonging, before the governor of the said company for the time being, unto which said governor, deputy governor, and assistants, we do by these presents give full power and authority to give and administer the said oaths respectively, according to our true meaning herein before declared, without any commission or further warrant to be had and obtained of us, our heirs or successors, in that behalf. And we do further, of our especial grace, certain knowledge, and mere motion, for us, our heirs and successors, give and grant to the said governor and company, and their successors for ever by these presents, that it shall be lawful and free for them and their assigns, at all and every time and times hereafter, out of any our realms or dominions whatsoever, to take, lead, carry, and transport, for and into their voyages, and for and towards the said plantation in New England, all such and so many of our loving subjects, or any other strangers that will become our loving subjects, and live under our allegiance, as shall willingly accompany them in the same voyages and plantation; and also shipping, armour, weapons, ordnance, munition, powder, shot, corn, victuals, and all manner of clothing, implements, furniture, beasts, cattle, horses, mares, merchandizes, and all other things necessary for the said plantation, and for their use and defence, and for trade with the people there, and in passing and returning to and fro, any law or statute to the contrary hereof in any wise notwithstanding; and without paying or yielding any custom or subsidy, either inward or outward, to us, our heirs or successors, for the same, by the space of seven years from the day of the date of these presents. Provided, that none of the said persons be such as shall be hereafter by especial name restrained by us, our heirs or successors. And, for their further encouragement, of our especial grace and favour, we do by these presents, for us, our heirs and successors, yield and grant to the said governor and company, and their successors, and every of them, their factors and assigns, that they and every of them shall be free and quit from all taxes, subsidies,

and customs, in New England, for the like space of seven years, and from all taxes and impositions for the space of twenty and one years, upon all goods and merchandizes at any time or times hereafter, either upon importation thither, or exportation from thence into our realm of England, or into any other our dominions by the said governor and company, and their successors, their deputies, factors, and assigns, or any of them; except only the five pounds per centum due for custom upon all such goods and merchandizes as after the said seven years shall be expired, shall be brought or imported into our realm of England, or any other of our dominions, according to the ancient trade of merchants, which five pounds per centum only being paid, it shall be thenceforth lawful and free for the said adventurers, the same goods and merchandizes to export and carry out of our said dominions into foreign parts, without any custom, tax, or other duty to be paid to us, our heirs or successors, or to any other officers or ministers of us, our heirs and successors. Provided, that the said goods and merchandizes be shipped out within thirteen months, after their first landing within any part of the said dominions. And we do for us, our heirs and successors, give and grant unto the said governor and company, and their successors, that whensoever, or so often as any custom or subsidy shall grow due or payable unto us, our heirs, or successors, according to the limitation and appointment aforesaid, by reason of any goods, wares, or merchandizes to be shipped out, or any return to be made of any goods, wares, or merchandize unto or from the said parts of New England hereby mentioned to be granted as aforesaid, or any the lands or territories aforesaid, that then, and so often, and in such case, the farmers, customers, and officers of our customs of England and Ireland, and every of them for the time being, upon request made to them by the said governor and company, or their successors, factors, or assigns, and upon convenient security to be given in that behalf, shall give and allow unto the said governor and company, and their successors, and to all and every person and persons free of that company, as aforesaid, six months time for the payment of the one half of all such custom and subsidy as shall be due and payable unto us, our heirs and successors, for the same; for which these our letters patent, or the duplicate, or the enrolment thereof, shall be unto our said officers a sufficient warrant and discharge. Nevertheless, our will and pleasure is, that if any of the said goods, wares, and merchandise, which be, or shall be at any time hereafter landed or exported out of any of our realms aforesaid, and shall be shipped with a purpose not to be carried to the parts of New England aforesaid, but to some other place, that then such payment, duty, custom, imposition, or forfeiture, shall be paid, or belong to us, our heirs and successors, for the said goods,

wares and merchandize, so fraudulently sought to be transported, as if this our grant had not been made nor granted. And we do further will, and by these presents, for us, our heirs and successors, firmly enjoin and command, as well the treasurer, chancellor and barons of the exchequer, of us, our heirs and successors, as also all and singular the customers, farmers, and collectors of the customs, subsidies, and impost, and other the officers and ministers of us, our heirs and successors whatsoever, for the time being, that they and every of them, upon the shewing forth unto them of these letters patent, or the duplicate or exemplification of the same, without any other writ or warrant whatsoever from us, our heirs or successors, to be obtained or sued forth, do and shall make full, whole, entire, and due allowance and clear discharge unto the said governor and company, and their successors, of all customs, subsidies, impositions, taxes and duties whatsoever, that shall or may be claimed by us, our heirs and successors, of or from the said governor and company, and their successors, for or by reason of the said goods, chattels, wares, merchandizes, and premises to be exported out of our said dominions, or any of them, into any part of the said lands or premises hereby mentioned, to be given, granted, and confirmed, or for, or by reason of any of the said goods, chattels, wares, or merchandizes to be imported from the said lands and premises hereby mentioned, to be given, granted, and confirmed into any of our said dominions, or any part thereof as aforesaid, excepting only the said five pounds per centum hereby reserved and payable after the expiration of the said term of seven years as aforesaid, and not before: And these our letters patent, or the enrolment, duplicate, or exemplification of the same shall be for ever hereafter, from time to time, as well to the treasurer, chancellor and barons of the exchequer of us, our heirs and successors, as to all and singular the customers, farmers, and collectors of the customs, subsidies, and imposts of us, our heirs and successors, and all searchers, and other the officers and ministers whatsoever of us, our heirs and successors, for the time being, a sufficient warrant and discharge in this behalf. And further our will and pleasure is, and we do hereby for us, our heirs and successors, ordain and declare, and grant to the said governor and company, and their successors, that all and every the subjects of us, our heirs or successors, which shall go to and inhabit within the said lands and premises hereby mentioned to be granted, and every of their children which shall happen to be born there, or on the seas in going thither, or returning from thence, shall have and enjoy all liberties and immunities of free and natural subjects within any of the dominions of us, our heirs or successors, to all intents, constructions, and pur-

poses whatsoever, as if they and every of them were born within the realm of England. And that the governor and deputy governor of the said company for the time being, or either of them, and any two or more of such of the said assistants as shall be thereunto appointed by the said governor and company at any of their courts or assemblies to be held as aforesaid, shall and may at all times, and from time to time hereafter, have full power and authority to minister and give the oath and oaths of supremacy and allegiance, or either of them, to all and every person and persons, which shall at any time or times hereafter go or pass to the lands and premises hereby mentioned to be granted to inhabit in the same. And we do of our further grace, certain knowledge and mere motion, give and grant to the said governor and company, and their successors, that it shall and may be lawful, to and for the governor or deputy governor, and such of the assistants and freemen of the said company for the time being as shall be assembled in any of their general courts aforesaid, or in any other courts to be specially summoned and assembled for that purpose, or the greater part of them (whereof the governor or deputy governor, and six of the assistants to be always seven) from time to time, to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions, and instructions, not contrary to the laws of this our realm of England, as well for settling of the forms and ceremonies of government and magistracy, fit and necessary for the said plantation, and the inhabitants there, and for naming and settling of all sorts of officers, both superiour and inferiour, which they shall find needful for that government and plantation, and the distinguishing and setting forth of the several duties, powers, and limits of every such office and place, and the forms of such oaths warrantable by the laws and statutes of this our realm of England, as shall be respectively ministered unto them for the execution of the said several offices and places; as also for the disposing and ordering of the elections of such of the said officers as shall be annual, and of such others as shall be to succeed in case of death or removal, and ministering the said oaths to the new elected officers, and for impositions of lawful fines, mulcts, imprisonment, or other lawful correction, according to the course of other corporations in this our realm of England, and for the directing, ruling, and disposing of all other matters and things, whereby our said people, inhabitants there, may be so religiously, peaceably, and civilly governed, as their good life and orderly conversation, may win and incite the natives of country, to the knowledge and obedience of the only true God and Saviour of mankind, and the christian faith, which in our royal intention, and the adventurers free profession, is the

principal end of this plantation. Willing, commanding, and requiring, and by these presents for us, our heirs, and successors, ordaining and appointing, that all such orders, laws, statutes and ordinances, instructions and directions, as shall be so made by the governor, or deputy governor of the said company, and such of the assistants and freemen as aforesaid, and published in writing, under their common seal, shall be carefully and duly observed, kept, performed, and put in execution, according to the true intent and meaning of the same; and these our letters patent, or the duplicate or exemplification thereof, shall be to all and every such officers, superiour and inferiour, from time to time, for the putting of the same orders, laws, statutes, and ordinances, instructions, and directions, in due execution against us, our heirs and successors, a sufficient warrant and discharge. And we do further, for us, our heirs and successors, give and grant to the said governor and company, and their successors by these presents, that all and every such chief commanders, captains, governors, and other officers and ministers, as by the said orders, laws, statutes, ordinances, instructions, or directions of the said governor and company for the time being, shall be from time to time hereafter employed either in the government of the said inhabitants and plantation, or in the way by sea thither, or from thence, according to the natures and limits of their offices and places respectively, shall from time to time hereafter forever, within the precints and parts of New England hereby mentioned to be granted and confirmed, or in the way by sea thither, or from thence, have full and absolute power and authority to correct, punish, pardon, govern, and rule all such the subjects of us, our heirs and successors, as shall from time to time adventure themselves in any voyage thither or from thence, or that shall at any time hereafter, inhabit within the precincts and parts of New-England aforesaid, according to the orders, laws, ordinances, instructions, and directions aforesaid, not being repugnant to the laws and statutes of our realm of England as aforesaid. And we do further, for us, our heirs and successors, give and grant to the said governor and company, and their successors, by these presents, that it shall and may be lawful, to and for the chief commanders, governors, and officers of the said company for the time being, who shall be resident in the said part of New England in America, by these presents granted, and others there inhabiting by their appointment and direction, from time to time, and at all times hereafter for their special defence and safety, to encounter, expulse, repel, and resist by force of arms, as well by sea as by land, and by all fitting ways and means whatsoever, all such person and persons, as shall at any time hereafter, attempt or enterprise the destruction, invasion,

detriment, or annoyance to the said plantation or inhabitants, and to take and surprise by all ways and means whatsoever, all and every such person and persons, with their ships, armour, munition, and other goods, as shall in hostile manner invade or attempt the defeating of the said plantation, or the hurt of the said company and inhabitants: Nevertheless, our will and pleasure is, and we do hereby declare to all Christian kings, princes and states, that if any person or persons which shall hereafter be of the said company or plantation, or any other by license or appointment of the said governor and company for the time being, shall at any time or times hereafter, rob or spoil, by sea or by land, or do any hurt, violence, or unlawful hostility to any of the subjects of us, our heirs or successors, or any of the subjects of any prince or state, being then in league and amity with us, our heirs and successors, and that upon such injury done and upon just complaint of such prince or state or their subjects, we, our heirs and successors shall make open proclamation within any of the parts within our realm of England commodious for that purpose, that the person or persons, having committed any such robbery or spoil, shall within the term limited by such a proclamation, make full restitution or satisfaction of all such injuries done, so as the said princes or others so complaining, may hold themselves fully satisfied and contented; and that if the said person or persons, having committed such robbery or spoil, shall not make, or cause to be made satisfaction accordingly, within such time so to be limited, that then it shall be lawful for us, our heirs and successors, to put the said person or persons out of our allegiance and protection, and that it shall be lawful and free for all princes to prosecute with hostility, the said offenders, and every of them, their and every of their procurers, aiders, abettors, and comforters in that behalf: Provided also, and our express will and pleasure is, and we do by these presents for us, our heirs and successors ordain and appoint that these presents shall not in any manner enure, or be taken to abridge, bar, or hinder any of our loving subjects whatsoever, to use and exercise the trade of fishing upon that coast of New England in America, by these presents mentioned to be granted; but that they, and every, or any of them, shall have full and free power and liberty to continue and use their said trade of fishing upon the said coast, in any the seas thereunto adjoining, or any arms of the seas or salt water rivers where they have been wont to fish, and to build and set up upon the lands by these presents granted, such wharves, stages, and work-houses as shall be necessary for the salting, drying, keeping, and packing up of their fish, to be taken or gotten upon that coast; and to cut down, and take such trees and other materials there growing, or being, or shall be needful

for that purpose, and for all other necessary easements, helps, and advantage concerning their said trade of fishing there, in such manner and form as they have been heretofore at any time accustomed to do, without making any wilful waste or spoil, any thing in these presents contained to the contrary notwithstanding. And we do further, for us, our heirs and successors, ordain and grant to the said governor and company, and their successors by these presents, that these our letters patent shall be firm, good, effectual, and available in all things, and to all intents and constructions of law, according to our true meaning herein before declared, and shall be construed, reputed, and adjudged in all cases most favourably on the behalf, and for the benefit and behoof of the said governor and company and their successors: although express mention of the true yearly value or certainty of the premises or any of them, or of any other gifts or grants, by us or any of our progenitors or predecessors to the aforesaid governor or company before this time made, in these presents is not made; or any statute, act, ordinance, provision, proclamation, or restraint to the contrary thereof, heretofore had, made, published, ordained, or provided, or any other matter, cause, or thing whatsoever to the contrary thereof in any wise notwithstanding.

In witness whereof, we have caused these our letters to be made patent.

Witness our self, at Westminster, the fourth day of March, in the fourth year of our reign.

Per Breve de Privato Sigillo.

WOLSELEY.

Prædictus Matthæus Cradocke Juratus est de Fide et Obedientia Regi et Successoribus suis, et de Debita Executione Officii Gubernatoris juxta Tenorem Præsentium, 18° Martii, 1628. Coram me Carolo Cæsare Milite in Cancellaria Mro.

CHAR. CÆSAR.

The Great Seal of England appendant by a party-coloured silk string.

THE CHARTER

OF THE

PROVINCE OF THE MASSACHUSETTS BAY

IN

NEW ENGLAND.

1691.

Recital that King James I. granted to the council at Plymouth in Devon,

All that part of America from 40 to 48 degrees Nor. latitude.

To hold in fee.

WILLIAM AND MARY, by the grace of God, King and Queen of England, Scotland, France and Ireland, defenders of the faith, &c. To all to whom these presents shall come, greeting. Whereas his late majesty King James the first, our royal predecessor, by his letters patent under the great seal of England, bearing date at Westminster the third day of November, in the eighteenth year of his reign, did give and grant unto the council established at Plymouth in the county of Devon, for the planting, ruling, ordering and governing of New England in America, and to their successors and assigns, all that part of America lying and being in breadth from forty degrees of northerly latitude, from the equinoctial line to the forty-eighth degree of the said northerly latitude, inclusively, and in length of and within all the breadth aforesaid throughout all the main lands from sea to sea, together also with all the firm lands, soils, grounds, havens, ports, rivers, waters, fishings, mines and minerals, as well royal mines of gold and silver, as other mines and minerals, precious stones, quarries, and all and singular other commodities, jurisdictions, royalties, privileges, franchises and preeminences, both within the said tract of land upon the main, and also within the islands and seas adjoining, Provided always, that the said lands, islands, or any the premises by the said letters patent intended or meant to be granted, were not then actually possessed or inhabited by any other christian prince or state, or within the bounds, limits or territories of the southern colony, then before granted by the said late king James the first, to be planted by divers of his subjects in the South parts: To have and to hold, possess and enjoy, all and singular the aforesaid continent lands, territories, islands, hereditaments, and precincts, seas, waters, fishings, with all and all manner of their commodities, royalties, liberties, preeminences and profits that should from thenceforth arise from thence, with all and singular their appurtenances, and every part and parcel thereof, unto the said council, and their successors and assigns for ever,

to the sole and proper use and benefit of the said council, and their successors and assigns forever: To be holden of his said late majesty king James the first, his heirs and successors, as of his manor of East Greenwich in the county of Kent, in free and common soccage, and not in capite, or by knight's service: Yielding and paying therefor to the said late king, his heirs and successors, the fifth part of the ore of gold and silver, which should from time to time, and at all times then after happen to be found, gotten, had and obtained, in, at, or within any of the said lands, limits, territories or precincts, or in, or within any part or parcel thereof, for or in respect of all and all manner of duties, demands and services whatsoever, to be done, made or paid to the said late king James the first, his heirs and successors (as in and by the said letters patent, amongst sundry other clauses, powers, privileges and grants therein contained, more at large appeareth:) And whereas the said council established at Plymouth in the county of Devon, for the planting, ruling, ordering and governing of New England in America, did by their deed indented under their common seal, bearing date the nineteenth day of March, in the third year of the reign of our royal grandfather king Charles the first, of ever blessed memory, give, grant, bargain, sell, enfeoff, alien and confirm to Sir Henry Roswell, Sir John Young, Knights, Thomas Southcott, John Humphreys, John Endicott, and Simon Whetcombe, their heirs and assigns, and their associates for ever, all that part of New England in America aforesaid, which lies and extends between a great river there, commonly called Monomack alias Merimack, and a certain other river there called Charles river, being in a bottom of a certain bay there commonly called Massachusetts, alias Mattachusetts, alias Massatusetts bay, and also all and singular those lands and hereditaments whatsoever, lying within the space of three English miles on the south part of the said Charles river, or of any and every part thereof; and also all and singular the lands and hereditaments whatsoever, lying and being within the space of three English miles to the southward of the southernmost part of the said bay called Massachusetts, alias Mattachusetts, alias Massatusetts bay: and also all those lands and hereditaments whatsoever which lie and be within the space of three English miles to the northward of the said river called Monomack alias Merimack, or to the northward of any and every part thereof, and all lands and hereditaments whatsoever lying within the limits aforesaid North and South in latitude, and in breadth, and in length, and longitude, of and within all the breadth aforesaid throughout the main lands there, from the atlantic and western sea and ocean on the east part to the south sea on the west part, and all lands and grounds, place and places, soil, woods and

Paying the fifth part of the ore of gold and silver.

That the Council at Plymouth granted to Sir Henry Roswell and others.

Part of New England by certain bounds.

wood grounds, havens, ports, rivers, waters, fishings and hereditaments whatsoever, lying within the said bounds and limits, and every part and parcel thereof; and also all islands lying in America aforesaid, in the said seas, or either of them on the western or eastern coasts or parts of the said tracts of land, by the said indenture mentioned to be given and granted, bargained, sold, enfeoffed, aliened and confirmed, or any of them; and also all mines and minerals, as well royal mines of gold and silver, as other mines and minerals whatsoever in the said lands and premises, or any part thereof, and all jurisdictions, rights, royalties, liberties, freedoms, immunities, privileges, franchises, preeminences and commodities whatsoever, which they the said council established at Plymouth in the county of Devon, for the planting, ruling, ordering and governing of New England in America, then had, or might use, exercise or enjoy, in or within the said lands and premises, by the same indenture mentioned to be given, granted, bargained, sold, enfeoffed and confirmed, in or within any part or parcel thereof: To have and to hold the said part of New England in America, which lies and extends, and is abutted as aforesaid, and every part and parcel thereof; and all the said islands, rivers, ports, havens, waters, fishings, mines, minerals, jurisdictions, franchises, royalties, liberties, privileges, commodities, hereditaments and premises whatsoever, with the appurtenances, unto the said Sir Henry Roswell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott, and Simon Whetcombe, their heirs and assigns and their associates for ever, to the only proper and absolute use and behoof of the said Sir Henry Roswell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott, and Simon Whetcombe, their heirs and assigns and their associates for evermore: To be holden of our said royal grandfather king Charles the first, his heirs and successors, as of his manor of East Greenwich in the county of Kent, in free and common soccage, and not in capite nor by knight's service, yielding and paying therefor unto our said royal grandfather, his heirs and successors, the fifth part of the ore of gold and silver which should from time to time, and at all times hereafter happen to be found, gotten, had and obtained in any of the said lands within the said limits, or in or within any part thereof, for and in satisfaction of all manner of duties, demands and services whatsoever, to be done, made or paid to our said royal grandfather, his heirs or successors (as in and by the said recited indenture may more at large appear.) And whereas our said royal grandfather in and by his letters patent under the great seal of England, bearing date at Westminster the fourth day of March, in the fourth year of his reign, for the consideration therein mentioned, did grant and confirm unto

To hold in fee.

paying, &c.

That king James I. by letters patent confirmed to Sir Henry Roswell, and others,

the said Sir Henry Roswell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott, and Simon Whetcombe, and to their associates after named, viz. Sir Richard Saltonstall, Knight, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs and assigns, all the said part of New England in America, lying and extending between the bounds and limits in the said indenture expressed, and all lands and grounds, place and places, soils, woods and wood grounds, havens, ports, rivers, waters, mines, minerals, jurisdictions, rights, royalties, liberties, freedoms, immunities, privileges, franchises, preeminences and hereditaments whatsoever; bargained, sold, enfeoffed and confirmed, or mentioned or intended to be given, granted, bargained, sold, enfeoffed, aliened and confirmed to them the said Sir Henry Roswell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott, and Simon Whetcombe, their heirs and assigns, and to their associates for ever, by the said recited indenture: To have and to hold the said part of New England in America, and other the premises thereby mentioned to be granted and confirmed, and every part and parcel thereof, with the appurtenances, to the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs and assigns for ever, to their only proper and absolute use and behoof for evermore: To be holden of our said royal grandfather, his heirs and successors, as of his manor of East Greenwich aforesaid, in free and common soccage, and not in capite nor by knight's service; and also yielding and paying therefor to our said royal grandfather, his heirs and successors, the fifth part only of all the ore of gold and silver which from time to time and at all times after should be there gotten, had or obtained, for all services, exactions and demands whatsoever, according to the tenor and reservation in the said recited indenture expressed. And further our said royal grandfather by the said letters patent did give and grant unto the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel

all those lands before granted to them by the Council at Plymouth.

Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs and assigns, all that said part of New England in America, which lies and extends between a great river commonly called Monomack, alias Merimack river, and a certain other river there called Charles river, being in the bottom of a certain bay there commonly called Massachusetts, alias Mattachusetts, alias Massatusetts bay; and also all and singular those lands and hereditaments whatsoever, lying within the space of three English miles, on the south part of the said river called Charles river, or of any or every part thereof; and also all and singular the lands and hereditaments whatsoever, lying and being within the space of three English miles to the southward of the southernmost part of the said bay called Massachusetts, alias Mattachusetts, alias Massatusetts bay; and also all those lands and hereditaments whatsoever, which lie and be within the space of three English miles to the northward of the said river called Monomack alias Merimack, or to the northward of any and every part thereof, and all lands and hereditaments whatsoever lying within the limits aforesaid, north and south in latitude, and breadth, and in length and longitude, of and within all the breadth aforesaid throughout the main lands there, from the atlantic or western sea and ocean on the east part, to the south sea on the west part; and all lands and grounds, place and places, soils, woods and wood lands, havens, ports, rivers, waters and hereditaments whatsoever, lying within the said bounds and limits, and every part and parcel thereof; and also all islands in America aforesaid, in the said seas, or either of them on the western or eastern coasts or parts of the said tracts of lands, thereby mentioned to be given and granted, or any of them; and all mines and minerals, as well royal mines of gold and silver, as other mines and minerals whatsoever in the said lands and premises, or any part thereof; and free liberty of fishing in or within any of the rivers and waters within the bounds and limits aforesaid, and the seas thereunto adjoining; and of all fishes, royal fishes, whales, balene, sturgeon, and other fishes of what kind or nature soever, that should at any time thereafter be taken in or within the said seas or waters, or any of them, by the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Tho-

by certain bounds and descriptions.

mas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs or assigns or by any other person or persons whatsoever there inhabiting, by them or any of them to be appointed to fish therein. Provided always, that if the said lands, islands, or any the premises before mentioned, and by the said letters patent last mentioned, intended and meant to be granted, were at the time of granting of the said former letters patent, dated the third day of November, in the eighteenth year of the reign of his late majesty king James the first, actually possessed or inhabited by any other christian prince or state, or were within the bounds, limits or territories of the said southern colony then before granted by the said king, to be planted by divers of his loving subjects in the south parts of America, that then the said grant of our said royal grandfather should not extend to any such parts or parcels thereof so formerly inhabited, or lying within the bounds of the southern plantation as aforesaid. But as to those parts or parcels so possessed or inhabited by any such christian prince or state, or being within the boundaries aforesaid, should be utterly void: To have and to hold, possess and enjoy the said parts of New England in America, which lie, extend, and are abutted as aforesaid, and every part and parcel thereof; and all the islands, rivers, ports, havens, waters, fishings, fishes, mines, minerals, jurisdictions, franchises, royalties, liberties, privileges, commodities, and premises whatsoever, with the appurtenances, unto the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs and assigns for ever: To the only proper and absolute use and behoof of the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs and assigns for evermore: To be holden of our said royal grandfather, his heirs and successors, as of his manor of East Greenwich in the county of Kent, within the realm of England, in free and common soccage, and not in capite nor by knight's service:

Provided they do not intrench on any former possessions or rights.

To hold in fee.

paying, &c. And also yielding and paying therefor to our said royal grandfather, his heirs and successors, the fifth part only of all the ore of gold and silver which from time to time and at all times hereafter, should be gotten, had or obtained, for all services, exactions and demands whatsoever. Provided always, and his majesty's express will and meaning was, that only one fifth part of all the gold and silver ore above mentioned in the whole, and no more, should be answered, reserved or payable unto our said royal grandfather, his heirs and successors, by colour or virtue of the said last mentioned letters patent, the double reservations or recitals aforesaid, or any thing therein contained notwithstanding.

And made them a body politick. And to the end that the affairs and business which from time to time should happen and arise concerning the said lands, and the plantations of the same, might be the better managed and ordered, and for the good government thereof, our said royal grandfather king Charles the first, did by his said letters patent create and make the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pinchcon, and George Foxcroft, and all such others as should thereafter be admitted and made free of the company and society therein after mentioned, one body corporate and politick in fact and name, by the name of the Governor and company of the Massachusetts Bay in New England, and did grant unto them and their successors divers powers, liberties and privileges, as in and by the said letters patent may more fully and at large appear. And whereas

Whereupon they settled a colony and it became very populous. the said governor and company of the Massachusetts Bay in New England, by virtue of the said letters patent did settle a colony of the English in the said parts of America, and divers good subjects of this kingdom, encouraged and invited by the said letters patent, did transport themselves and their effects into the same, whereby the said plantation did become very populous, and divers counties, towns and places, were created, erected, made, set forth, or designed within the said parts of America, by the said governor and

That in 1684 in the court of chancery a judgment was given that those letters patent should be cancelled vacated and company for the time being: And whereas in the term of the Holy Trinity, in the thirty-sixth year of the reign of our dearest uncle King Charles the Second, a judgment was given in our court of Chancery then sitting at Winchester, upon a writ of scire facias, brought and prosecuted in the said court against the governor and company of the Massachusetts Bay in New England, that the said letters patent of our said royal grandfather King Charles the First, bear-

ing date at Westminster the fourth day of March, in the fourth year of his reign, made and granted to the said governor and company of the Massachusetts Bay in New England, and the enrolment of the same, should be cancelled, vacated and annihilated, and should be brought into the said court to be cancelled, (as in and by the said judgment remaining upon record in the said court doth more at large appear:) And whereas several persons employed as agents in behalf of our said colony of the Massachusetts Bay in New England, have made their humble application unto us, that we would be graciously pleased by our royal charter to incorporate our subjects in our said colony, and to grant and confirm unto them such powers, privileges and franchises as in our royal wisdom, should be thought most conducing to our interest and service, and to the welfare and happy state of our subjects in New England: And we being graciously pleased to gratify our said subjects; and also to the end our good subjects within our colony of New Plymouth in New England aforesaid, may be brought under such a form of government, as may put them in a better condition of defence, and considering as well the granting unto them as unto our subjects in the said colony of the Massachusetts Bay our royal charter, with reasonable powers and privileges, will much tend not only to the safety, but to the flourishing estate of our subjects in the said parts of New England, and also to the advancing of the ends for which the said plantations were at first encouraged; of our special grace, certain knowledge, and mere motion, have willed and ordained, and we do by these presents for us, our heirs and successors will and ordain, that the territories and colonies commonly called or known by the names of the colony of the Massachusetts Bay, and colony of New Plymouth, the province of Main, the territory called Accada, or Nova Scotia; and all that tract of land lying between the said territories of Nova Scotia, and the said province of Main, be erected, united and incorporated: And we do by these presents unite, erect and incorporate the same into one real province by the name of our province of the Massachusetts Bay in New England; and of our especial grace, certain knowledge, and mere motion, we have given and granted, and by these presents, for us, our heirs and successors, do give and grant unto our good subjects, the inhabitants of our said province or territory of the Massachusetts Bay, and their successors, all that part of New England in America, lying and extending from the great river commonly called Monomack, alias Merimack, on the north part, and from three miles northward of the said river to the Atlantic or western sea or ocean on the south part, and all the lands and hereditaments whatsoever lying within the limits aforesaid, and extending as far as the outermost points or promontories of land called Cape Cod, and

annihilated, and should be brought into court to be cancelled.

The agents of that colony petitioned to be reincorporated.

K. William and Q. Mary unite the Massachusetts, New Plymouth and the province of Main and Nova Scotia &c. into one real province.

And grant to the inhabitants all those lands herein bounded and described.

Cape Malabar north and south, and in latitude, breadth, and in length and longitude, of and within all the breadth and compass aforesaid throughout the main land there, from the said Atlantic or western sea, and ocean on the east part towards the south sea, or westward as far as our colonies of Rhode Island, Connecticut, and the Narragansett country: And also all that part and portion of main land, beginning at the entrance of Piscataway harbour, and so to pass up the same into the river of Newichwannock, and through the same into the furthest head thereof, and from thence northwestward, till one hundred and twenty miles be finished, and from Piscataway harbour mouth aforesaid north-eastward along the sea coast to Sagadehock, and from the period of one hundred and twenty miles aforesaid to cross over land to the one hundred and twenty miles before reckoned up into the land from Piscataway harbour through Newichwannock river, and also the north half of the Isles of Shoals, together with the Isles of Capawock, and Nantuckett near Cape Cod aforesaid, and also the lands and hereditaments lying and being in the country or territory commonly called Accada, or Nova Scotia, and all those lands and hereditaments lying and extending between the said country or territory of Nova Scotia, and the said river of Sagadehock or any part thereof; and all lands, grounds, places, soils, woods and woodgrounds, havens, ports, rivers, waters, and other hereditaments and premises whatsoever, lying within the said bounds and limits aforesaid, and every part and parcel thereof: and also all islands and islets lying within ten leagues directly opposite to the main land within the said bounds: and all mines and minerals, as well royal mines of gold and silver, as other mines and minerals whatsoever in the said lands and premises, or any part thereof. To have and to hold the said territories, tracts, countries, lands, hereditaments, and all and singular other the premises, with their and every of their appurtenances to our said subjects the inhabitants of our said province of the Massachusetts Bay in New England, and their successors to their only proper use and behoof for evermore, to be holden of us, our heirs and successors, as of our manor of East Greenwich, in the county of Kent, by fealty only in free and common soccage: yielding and paying therefor yearly to us, our heirs and successors, the fifth part of all gold and silver ore, and precious stones which shall from time to time, and at all times hereafter, happen to be found, gotten had and obtained in any of the said lands and premises, or within any part thereof: Provided nevertheless, and we do for us, our heirs and successors grant and ordain, that all and every such lands, tenements and hereditaments, and all other estates, which any person or persons, or bodies politick or corporate, towns, villages, colleges or schools, do hold and enjoy, or ought to hold and enjoy,

To hold in fee.

Paying, &c.

All lands, hereditaments, &c. formerly granted to

within the bounds aforesaid, by or under any grant or estate duly made or granted by any general court formerly held, or by virtue of the letters patent herein before recited, or by any other lawful right or title whatsoever, shall be by such person and persons, bodies politick and corporate, towns, villages, colleges, or schools, their respective heirs, successors and assigns for ever, hereafter held and enjoyed, according to the purport and intent of such respective grant, under and subject nevertheless to the rents and services thereby reserved or made payable, any matter or thing whatsoever to the contrary notwithstanding. And provided also, That nothing herein contained, shall extend, or be understood, or taken, to impeach or prejudice any right, title, interest or demand, which Samuel Allen of London, merchant, claiming from and under John Mason, Esq. deceased, or any other person or persons, hath or have, or claimeth to have, hold or enjoy, of, into, or out of any part or parts of the premises, situate within the limits above mentioned: but that the said Samuel Allen, and all and every such person and persons, may and shall have, hold and enjoy the same in such manner (and no other than) as if these presents had not been had or made. It being our further will and pleasure, That no grants or conveyances of any lands, tenements or hereditaments to any towns, colleges, schools of learning, or to any private person or persons, shall be judged or taken, to be avoided or prejudiced, for, or by reason of any want or defect of form, but that the same stand and remain in force, and be maintained, adjudged, and have effect, in the same manner as the same should or ought before the time of the said recited judgment, according to the laws and rules then and there usually practised and allowed. And we do further, for us, our heirs and successors, will, establish, and ordain, That from henceforth for ever there shall be one governor; one lieutenant or deputy governor; and one secretary of our said province or territory, to be from time to time appointed and commissionated by us, our heirs and successors; and eight and twenty assistants, or counsellors, to be advising and assisting to the governor of our said province or territory for the time being, as by these presents is hereafter directed and appointed: which said counsellors or assistants are to be constituted, elected and chosen in such form and manner as hereafter in these presents is expressed. And for the better execution of our royal pleasure and grant in this behalf, we do by these presents, for us, our heirs and successors, nominate, ordain, make and constitute our trusty and well beloved Simon Broadstreet, John Richards, Nathaniel Saltonstall, Wait Winthrop, John Phillips, James Russell, Samuel Sewall, Samuel Appleton, Bartholomew Gidney, John Harthorn, Elisha Hutchinson, Robert Pike, Jonathan Corwin, John Jolliffe, Adam Winthrop, Richard

any town, college, or school of learning, confirmed.

A saving for Samuel Allen's claim.

Grants or conveyances not prejudiced for want of form.

And ordain that there shall be a governor, lieut. governor and secretary appointed by the King.

Eight and twenty counsellors to be chosen as hereafter is expressed.

The names of the first counsellors or assistants.

Middlecot, John Foster, Peter Serjeant, John Lynde, Samuel Heyman, Stephen Mason, Thomas Hinkley, William Bradford, John Walley, Barnabas Lothrop, Job Alcot, Samuel, Daniel, and Silvanus Davis, Esqrs. the first and present counsellors or assistants of our said province; to continue in their said respective offices or trusts of counsellors or assistants until the last Wednesday in May, which shall be in the year of our Lord, one thousand six hundred ninety and three, and until other counsellors or assistants shall be chosen and appointed in their stead, in such manner as in these presents is expressed. And we do further by these presents constitute and appoint our trusty and well-beloved Isaac Addington, Esq. to be our first and present secretary of our said province, during our pleasure. And our will and pleasure is, that the governor of our said province for the time being, shall have authority, from time to time, at his discretion, to assemble and call together the counsellors or assistants of our said province for the time being: And that the said governor, with the said assistants or counsellors, or seven of them at the least, shall and may from time to time hold and keep a council for the ordering and directing the affairs of our said province. And further, we will, and by these presents for us, our heirs and successors, do ordain and grant, that there shall and may be convened, held and kept by the governor for the time being, upon every last Wednesday in the month of May, every year, for ever, and at all such other times as the governor of our said province shall think fit and appoint, a great and general court or assembly; which said great and general court or assembly shall consist of the governor and council or assistants for the time being; and of such freeholders of our said province or territory as shall be from time to time elected or deputed by the major part of the freeholders, and other inhabitants of the respective towns or places who shall be present at such elections; each of the said towns and places being hereby empowered to elect and depute two persons and no more to serve for and represent them respectively in the said great and general court or assembly. To which great and general court or assembly to be held as aforesaid, we do hereby, for us, our heirs and successors, give and grant full power and authority from time to time to direct, appoint and declare what number each county, town and place shall elect and depute to serve for and represent them respectively in the said great and general court or assembly. Provided always, that no freeholder, or other person, shall have a vote in the election of members to serve in any great and general court or assembly to be held as aforesaid, who at the time of such election shall not have an estate of freehold in land within our said province or territory, to the value of forty shillings per annum at the least; or other

To continue until May, 1693, and until others are chosen.

Secretary appointed.

The governor may assemble the counsellors and with seven hold a council.

A general court to be held the last Wednesday of May annually &c.

To consist of the governor council and such freeholders as shall be elected to represent the respective towns.

Each town may elect two.

Qualification of the electors.

estate to the value of forty pounds sterling: and that every person who shall be so elected, shall, before he sit or act in the said great and general court or assembly, take the oaths mentioned in an act of parliament made in the first year of our reign, entitled, *An act for abrogating of the oaths of allegiance and supremacy, and appointing other oaths*, and thereby appointed to be taken instead of the oaths of allegiance and supremacy: and shall make, repeat and subscribe the declaration mentioned in the said act, before the governor or lieutenant or deputy governor, or any two of the assistants for the time being, who shall be thereunto authorized and appointed by our said governor. And that the governor for the time being shall have full power and authority from time to time, as he shall judge necessary, to adjourn, prorogue and dissolve all great and general courts or assemblies met and convened as aforesaid. And our will and pleasure is, and we do hereby, for us, our heirs and successors, grant, establish and ordain, that yearly, once in every year for ever hereafter, the aforesaid number of eight and twenty counsellors or assistants shall be by the general court or assembly newly chosen; that is to say, eighteen at least of the inhabitants of, or proprietors of lands within the territory formerly called the colony of the Massachusetts Bay; and four at the least of the inhabitants of, or proprietors of lands within the territory formerly called New Plymouth; and three at the least of the inhabitants of, or proprietors of land within the territory formerly called the Province of Main; and one at the least of the inhabitants of, or proprietors of land within the territory lying between the river of Sagadehock and Nova Scotia. And that the said counsellors or assistants or any of them, shall or may at any time hereafter, be removed or displaced from their respective places or trust of counsellors or assistants by any great or general court or assembly; and that if any of the said counsellors or assistants shall happen to die, or be removed, as aforesaid, before the general day of election, that then, and in every such case, the great and general court or assembly at their first sitting, may proceed to a new election of one or more counsellors or assistants, in the room or place of such counsellors or assistants so dying or removed. And we do further grant and ordain, that it shall and may be lawful for the said governor, with the advice and consent of the council or assistants, from time to time, to nominate and appoint judges, commissioners of oyer and terminer, sheriffs, provosts, marshals, justices of the peace, and other officers, to our council and courts of justice belonging. Provided always, that no such nomination or appointment of officers be made without notice first given, or summons issued out seven days before such nomination or appointment, unto such of the

Oaths to be taken &c. by the representatives.

The governor to adjourn, prorogue and dissolve the general court.

The counsellors to be chosen yearly, and their qualification.

To be supplied upon occasion.

Judges, sheriffs, justices, to be appointed.

said counsellors or assistants as shall be at that time residing within our said province. And our will and pleasure is, that the governor, and lieutenant or deputy governor and counsellors or assistants for the time being, and all other officers to be appointed or chosen, as aforesaid, shall, before the undertaking the execution of their offices and places respectively, take their several and respective oaths for the due and faithful performance of their duties in their several and respective offices and places; and also the oaths appointed by the said act of parliament made in the first year of our reign, to be taken instead of the oaths of allegiance and supremacy; and shall make, repeat and subscribe the declaration mentioned in the said act, before such person or persons as are by these presents herein after appointed: (that is to say,) the governor of our said province or territory, for the time being, shall take the said oaths, and make, repeat and subscribe the said declaration before the lieutenant or deputy governor; or, in his absence, before any two or more of the said persons hereby nominated and appointed the present counsellors or assistants of our said province or territory, to whom we do by these presents give full power and authority to give and administer the same to our said governor accordingly. And after our said governor shall be sworn, and shall have subscribed the said declaration, that then our lieutenant or deputy governor for the time being, and the counsellors or assistants before by these presents nominated and appointed, shall take the said oaths, and make, repeat and subscribe the said declaration before our said governor: and that every such person or persons as shall (at any time of the annual elections, or otherwise upon death or removal) be appointed to be the new counsellors or assistants, and all other officers to be hereafter chosen from time to time, shall take the oaths to their respective offices and places belonging; and also the said oaths appointed by the said act of parliament, to be taken instead of the oaths of allegiance and supremacy; and shall make, repeat and subscribe the declaration mentioned in the said act, before the governor, or lieutenant or deputy governor, or any two or more counsellors or assistants; or such other person or persons as shall be appointed thereunto by the governor for the time being: to whom we do therefore by these presents give full power and authority from time to time, to give and administer the same respectively, according to our true meaning herein before declared, without any commission or further warrant, to be had and obtained from us, our heirs and successors in that behalf. And our will and pleasure is, and we do hereby require and command, that all and every person and persons hereafter by us, our heirs and successors, nominated and appointed to the respective offices of governor, or lieutenant or deputy governor, and

Governor, lieutenant governor, counsellors and other officers to take the oaths, &c.

Before whom.

secretary of our said province or territory (which said governor, or lieutenant, or deputy governor, and secretary of our said province or territory for the time being, we do hereby reserve full power and authority, to us, our heirs and successors to nominate and appoint accordingly) shall before he or they be admitted to the execution of their respective offices, take as well the oath for the due and faithful performance of the said offices respectively, as also the oaths appointed by the said act of parliament, made in the said first year of our reign, to be taken instead of the said oaths of allegiance and supremacy; and shall also make repeat and subscribe the declaration appointed by the said act in such manner and before such persons as aforesaid. And further our will and pleasure is, and we do hereby for us, our heirs and successors, grant, establish and ordain, that all and every of the subjects of us, our heirs and successors, which shall go to and inhabit within our said province and territory, and every of their children which shall happen to be born there, or on the seas in going thither, or returning from thence, shall have and enjoy, all liberties and immunities of free and natural subjects within any of the dominions of us, our heirs and successors, to all intents, constructions and purposes whatsoever, as if they and every of them were born within this our realm of England. And for the greater ease and encouragement of our loving subjects inhabiting our said province or territory of the Massachusetts Bay, and of such as shall come to inhabit there, we do by these presents, for us, our heirs and successors, grant, establish and ordain, that for ever hereafter there shall be a liberty of conscience allowed in the worship of God to all christians (except papists) inhabiting or which shall inhabit or be resident within our said province or territory. And we do hereby grant and ordain, that the governor, or lieutenant, or deputy governor of our said province or territory, for the time being, or either of them, or any two or more of the council or assistants for the time being, as shall be thereunto appointed by the said governor, shall and may at all times, and from time to time hereafter, have full power and authority to administer and give the oaths appointed by the said act of parliament, made in the first year of our reign, to be taken instead of the oaths of allegiance and supremacy, to all and every person and persons which are now inhabiting or residing within our said province or territory, or which shall at any time or times hereafter go or pass thither. And we do of our further grace, certain knowledge and mere motion, grant, establish and ordain, for us, our heirs and successors, that the great and general court or assembly of our said province or territory for the time being, convened as aforesaid, shall for ever have full power and authority to erect and constitute judicatories and courts of

Persons born in New England, to have the privileges of natural subjects of England.

Liberty of conscience to be granted to all christians, except papists.

Governor, &c. to administer the oaths appointed to the inhabitants.

The general court empowered to erect judicatories, and courts of record, &c.

record, or other courts, to be held in the name of us, our heirs and successors; for the hearing, trying and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes and things whatsoever, arising or happening within our said province or territory; or between persons inhabiting or residing there; whether the same be criminal or civil, and whether the said crimes be capital or not capital, and whether the said pleas be real, personal or mixt; and for the awarding and making out of execution thereupon: To which courts and judicatories, we do hereby, for us, our heirs and successors, give and grant full power and authority, from time to time to administer oaths for the better discovery of truth in any matter in controversy or depending before them. And we do for us, our heirs and successors, grant, establish and ordain, that the governor of our said province or territory for the time being, with the council or assistants, may do, execute or perform all that is necessary for the probate of wills, and granting of administrations for, touching or concerning any interests or estate which any person or persons shall have within our said province or territory: And whereas we judge it necessary, that all our subjects should have liberty to appeal to us, our heirs and successors, in cases that may deserve the same, we do by these presents ordain, that in case either party shall not rest satisfied with the judgment or sentence of any judicatories or courts within our said province or territory in any personal action, wherein the matter in difference doth exceed the value of three hundred pounds sterling, that then he or they may appeal to us, our heirs and successors, in our or their privy council. Provided, such appeal be made within fourteen days after the sentence or judgment given; and that before such appeal be allowed, security be given by the party or parties appealing, in the value of the matter in difference, to pay or answer the debt or damages for the which judgment or sentence is given, with such costs and damages as shall be awarded by us, our heirs or successors, in case the judgment or sentence be affirmed: And provided also, that no execution shall be staid or suspended, by reason of such appeal unto us, our heirs and successors, in our or their privy council; so as the party suing or taking out execution, do in the like manner give security to the value of the matter in difference, to make restitution in case the said judgment or sentence be reversed or annulled upon the said appeal. And we do further, for us, our heirs and successors, give and grant to the said governor, and the great and general court or assembly of our said province or territory, for the time being, full power and authority, from time to time, to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instruc-

Governor with the council shall have the probate of wills, and granting administrations.

Appeals to the king in some personal actions.

Execution not to be staid.

The General Court has power to make laws, not repugnant to the laws of England.

tions either with penalties or without (so as the same be not repugnant or contrary to the laws of this our realm of England) as they shall judge to be for the good and welfare of our said province or territory, and for the government and ordering thereof, and of the people inhabiting, or who shall inhabit the same; and for the necessary support and defence of the government thereof. And we do for us, our heirs and successors, give and grant, that the said general court or assembly shall have full power and authority to name and settle annually all civil officers within the said province, such officers excepted, the election and constitution of whom we have by these presents reserved to us, our heirs and successors, or to the governor of our said province for the time being; and to set forth the several duties, powers and limits of every such officer to be appointed by the said general court or assembly; and the forms of such oaths not repugnant to the laws and statutes of this our realm of England, as shall be respectively administered unto them for the execution of their several offices and places; and also to impose fines, mulcts, imprisonments, and other punishments; and to impose and levy proportionable and reasonable assessments, rates and taxes, upon the estates and persons of all and every the proprietors and inhabitants of our said province or territory, to be issued and disposed of by warrant under the hand of the governor of our said province for the time being, with the advice and consent of the council, for our service in the necessary defence and support of our government of our said province or territory, and the protection and preservation of the inhabitants there, according to such acts as are or shall be in force within our said province; and to dispose of matters and things whereby our subjects, inhabitants of our said province, may be religiously, peaceably and civilly governed, protected and defended; so as their good life and orderly conversation may win the Indians, natives of the country, to the knowledge and obedience of the only true God and Saviour of mankind, and the Christian faith, which his royal majesty our royal grandfather king Charles the first, in his said letters patent declared was his royal intention, and the adventurers free profession to be the principal end of the said plantation. And for the better securing and maintaining liberty of conscience hereby granted to all persons, at any time being and residing within our said province or territory as aforesaid, willing, commanding and requiring, and by these presents for us, our heirs and successors, ordaining and appointing that all such orders, laws, statutes and ordinances, instructions and directions as shall be so made and published under our seal of our said province or territory, shall be carefully and duly observed, kept and performed, and put in execution according to the true intent and meaning of these presents. Provided

To name and settle civil officers, except, &c.

To impose fines, &c. and taxes to be disposed by warrant from the governor and council.

To promote religion and good order, and the conversion of the Indians.

always, and we do by these presents, for us, our heirs and successors, establish and ordain, that in the framing and passing of all such orders, laws, statutes and ordinances, and in all elections and acts of government whatsoever, to be passed, made or done by the said general court or assembly, or in council, the governor of our said province or territory of the Massachusetts Bay in New England for the time being shall have the negative voice; and that without his consent or approbation signified and declared in writing, no such orders, laws, statutes, ordinances, elections, or other acts of government whatsoever, so to be made, passed or done by the said general assembly or in council, shall be of any force, effect or validity; any thing herein contained to the contray in any wise notwithstanding. And we do for us, our heirs and successors, establish and ordain, that the said orders, laws, statutes and ordinances, be by the first opportunity after the making thereof, sent or transmitted unto us, our heirs and successors, under the public seal, to be appointed by us, for our or their approbation or disallowance. And that in case all or any of them shall at any time within the space of three years, next after the same shall have been presented to us, our heirs and successors, in our or their privy council, be disallowed and rejected, and so signified by us, our heirs and successors under our or their sign manual and signet; or by, or in our or their privy council, unto the governor for the time being, then such and so many of them as shall be so disallowed and rejected shall thenceforth cease and determine, and become utterly void and of none effect. Provided always, that in case we, our heirs or successors, shall not within the term of three years after the presenting of such orders, laws, statutes or ordinances, as aforesaid, signify our or their disallowance of the same, then the said orders, laws, statutes or ordinances, shall be and continue in full force and effect, according to the true intent and meaning of the same, until the expiration thereof, or that the same shall be repealed, by the general assembly of our said province for the time being. Provided also, that it shall and may be lawful for the said governor and general assembly to make or pass any grant of lands lying within the bounds of the colonies formerly called the colonies of the Massachusetts Bay, and New Plymouth, and province of Main, in such manner as heretofore they might have done by virtue of any former charter or letters patent; which grants of lands within the bounds aforesaid we do hereby will and ordain to be and continue for ever of full force and effect, without our further approbation or consent. And so as nevertheless, and it is our royal will and pleasure, that no grant or grants of any lands lying or extending from the river of Sagadehock to the gulf of St. Laurence and Canada rivers, and to the main sea northward and eastward, to be made or

The governor to have the negative voice in all elections and acts of government.

Laws to be sent to England, for the royal approbation.

If not disallowed within three years, to be in force until repealed by the general assembly.

The general court has power to pass any grants of land in Massachusetts, Plymouth, or the Province of Main.

Grants of land between Sagadehock and St. Laurence, to have the royal approbation.

passed by the governor and general assembly of our said province, be of any force, validity or effect, until we, our heirs or successors, shall have signified our or their approbation of the same. And we do by these presents for us, our heirs and successors, grant, establish and ordain, that the governor of our said province or territory for the time being, shall have full power by himself, or by any chief commander, or other officer or officers, to be appointed by him from time to time, to train, instruct, exercise and govern the militia there; and for the special defence and safety of our said province or territory, to assemble in martial array, and put in warlike posture the inhabitants of our said province or territory, and to lead and conduct them, and with them to encounter, expulse, repel, resist and pursue by force of arms, as well by sea as by land, within or without the limits of our said province or territory, and also to kill, slay, destroy and conquer, by all fitting ways, enterprises and means whatsoever, all and every such person and persons as shall at any time hereafter attempt or enterprise the destruction, invasion, detriment or annoyance of our said province or territory; and to use and exercise the law martial in time of actual war, invasion or rebellion, as occasion shall necessarily require; and also from time to time to erect forts, and to fortify any place or places within our said province or territory, and the same to furnish with all necessary ammunition, provisions and stores of war, for offence or defence, and to commit from time to time the custody and government of the same to such person or persons as to him shall seem meet; and the said forts and fortifications to demolish at his pleasure, and to take and surprise by all ways and means whatsoever all and every such person or persons with their ships, arms, ammunition, and other goods, as shall in a hostile manner invade, or attempt the invading, conquering or annoying of our said province or territory. Provided always, and we do by these presents for us, our heirs and successors, grant, establish and ordain, that the said governor shall not at any time hereafter, by virtue of any power hereby granted, or hereafter to be granted to him, transport any of the inhabitants of our said province or territory, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the great and general court or assembly of our said province or territory; nor grant commissions for exercising the law martial upon any the inhabitants of our said province or territory, without the advice and consent of the council or assistants of the same. Provided in like manner, and we do by these presents, for us, our heirs and successors, constitute and ordain, that when and as often as the governor of our said province for the time being, shall happen to die, or be displaced by us, our heirs or successors,

The governor to command the militia.

To erect and demolish forts, &c.

Not to transport any persons out of the province without their own consent, &c.

Nor exercise the law martial without advice of the council.

or be absent from his government; that then and in any of the said cases, the lieutenant or deputy governor of our said province, for the time being, shall have full power and authority to do and execute all and every such acts, matters and things, which our governor of our said province, for the time being, might or could by virtue of these our letters patent lawfully do or execute, if he were personally present, until the return of the governor so absent, or the arrival or constitution of such other governor as shall or may be appointed by us, our heirs or successors in his stead: And that when and as often as the governor, and lieutenant or deputy governor of our said province or territory, for the time being, shall happen to die, or be displaced by us, our heirs or successors, or be absent from our said province; and that there shall be no person within the said province, commissionated by us, our heirs or successors to be governor within the same; then and in every of the said cases, the council or assistants of our said province shall have full power and authority, and we do hereby give and grant unto the said council or assistants of our said province, for the time being, or the major part of them, full power and authority to do and execute all and every such acts, matters and things which the said governor, or lieutenant or deputy governor of our said province or territory, for the time being, might or could lawfully do or exercise, if they or either of them were personally present, until the return of the governor, lieutenant or deputy governor so absent, or arrival or constitution of such other governor, or lieutenant or deputy governor, as shall and may be appointed by us, our heirs or successors from time to time. Provided always, and it is hereby declared, that nothing herein shall extend or be taken to ereet, or grant, or allow the exercise of any admiral court, jurisdiction, power or authority, but that the same shall be, and is hereby reserved to us and our successors, and shall from time to time be erected, granted and exercised by virtue of commissions to be issued under the great seal of England, or under the seal of the high admiral, or the commissioners for executing the office of high admiral of England. And further, our express will and pleasure is, and we do by these presents, for us, our heirs and successors, ordain and appoint that these our letters patent shall not in any manner enure, or be taken to abridge, bar or hinder any of our loving subjects whatsoever, to use and exercise the trade of fishing upon the coasts of New England, but that they and every of them shall have full and free power and liberty to continue and use their said trade of fishing upon the said coast, in any of the seas thereunto adjoining, or any arms of the said seas or salt water rivers, where they have been wont to fish; and to build and set upon the lands within our said province or colony, lying

In case of the governor's death, removal, or absence from his government, the lieutenant governor shall supply his place.

In the absence of both the governor and deputy governor, the major part of the council to have their power.

Admiralty jurisdictions reserved.

The trade of fishing not to be abridged.

waste, and not then possessed by particular proprietors, such wharves, stages and work-houses, as shall be necessary for the salting, drying, keeping and packing of their fish, to be taken or gotten upon that coast; and to cut down and take such trees and other materials there growing, or being upon any parts or places lying waste, and not then in possession of particular proprietors, as shall be needful for that purpose, and for all other necessary easements, helps and advantages concerning the trade of fishing there, in such manner and form as they have been heretofore at any time accustomed to do, without making any wilful waste or spoil; any thing in these presents contained to the contrary notwithstanding. And lastly, for the better providing and furnishing of masts for our royal navy, we do hereby reserve to us, our heirs and successors, all trees of the diameter of twenty-four inches, and upwards of twelve inches from the ground, growing upon any soil or tract of land within our said province or territory, not heretofore granted to any private persons: And we do restrain and forbid all persons whatsoever from felling, cutting or destroying any such trees without the royal license of us, our heirs and successors, first had and obtained; upon penalty of forfeiting one hundred pounds sterling unto us, our heirs and successors, for every such tree so felled, cut or destroyed, without such license had or obtained in that behalf: Any thing in these presents contained to the contrary in any wise notwithstanding.

Trees fit for masts not growing upon any soil granted to particular persons to be preserved.

In witness whereof, we have caused these our letters to be made patent. Witness ourselves at Westminster, the seventh day of October, in the third year of our reign.

By writ of privy seal.

PIGOT.

THE

EXPLANATORY CHARTER,

GRANTED BY

HIS MAJESTY KING GEORGE.

1726.

GEORGE, by the grace of God, of Great Britain, France and Ireland, King, defender of the faith, &c. To all to whom these presents shall come, greeting. Whereas our late royal predecessors William and Mary, king and queen of England, &c. did by their letters patent under their great seal of England, bearing date at Westminster, the seventh of October in the third year of their reign, for themselves, their heirs and successors, unite, erect and incorporate, the territories and colonies, commonly called or known by the names of the Colony of the Massachusetts Bay, and Colony of New Plymouth, the Province of Main, the territory called Accada or Nova Scotia, and all that tract of land lying between the said territories of Nova Scotia, and the said province of Main, into one real province by the name of our province of the Massachusetts Bay in New England. And whereas their said late majesties king William and queen Mary, did by the said recited letters patent (amongst other things therein contained) for themselves, their heirs, and successors, ordain and grant, that there should and might be convened, held, and kept by the governor for the time being, upon every last Wednesday in the month of May every year for ever, and at all such other times as the governor of their said province should think fit and appoint, a great and general court or assembly; which said great and general court or assembly should consist of the governor and council, or assistants for the time being, and of such freeholders of their said province or territories as should be from time to time elected or deputed by the major part of the freeholders and other inhabitants of the respective towns or places, who should be present at such elections: each of the said towns and places being thereby empowered to elect and depute two persons and no more, to serve for and represent them respectively in the said great and general court or assembly, and that the governor for

the time being should have full power and authority, from time to time as he should judge necessary, to adjourn, prorogue and dissolve all great and general courts or assemblies met and convened as aforesaid: And did thereby also for themselves, their heirs and successors, provide, establish and ordain, that in the framing and passing of all orders, laws, statutes, and ordinances, and in all elections, and acts of government whatsoever, to be passed, made or done by the said general court or assembly or in council, the governor of the said province or territory of the Massachusetts Bay in New England for the time being, should have the negative voice, and that without his consent or approbation, signified and declared in writing, no such orders, laws, statutes, ordinances, elections, or other acts of government whatsoever, so to be made, passed or done by the said general assembly, or in council, should be of any force, effect, or validity, any thing therein contained to the contrary in any wise notwithstanding; as in and by the said letters patent (relation being thereunto had) may more fully and at large appear.

And whereas no provision is made by the said recited letters patent, touching the nomination and election of a speaker of the representatives assembled in any great and general court of our said province nor any particular reservation made of the right of us, our heirs and successors to approve or disapprove of such speaker by the governor of the said province appointed, or to be appointed by us or them for the time being: and no power is granted by the said recited letters patent to the said house of representatives to adjourn themselves for any time whatsoever; by means whereof divers doubts and controversies have arisen within our said province, to the interruption of the public business thereof, and the obstruction of our service; Know ye therefore, that for removing the said doubts and controversies, and preventing the like mischiefs for the future; and also for the further explanation of the said recited letters patent, we of our especial grace, certain knowledge, and mere motion, have granted, ordained and appointed, and by these presents for us, our heirs and successors, do will, grant, ordain, and appoint, that for ever hereafter, the representatives assembled in any great or general court of our said province to be hereafter summoned, shall upon the first day of their assembling, elect a fit person out of the said representatives, to be speaker of the house of representatives, in such general court; and that the person so elected shall from time to time be presented to the governor of our said province for the time being, or in his absence to the lieutenant governor or commander in chief of our said province for the time being, for his approbation: to which governor, lieutenant governor and commander in chief

Speaker to be approved or disapproved by written message.

respectively, we do hereby for us, our heirs and successors, give full power and authority to approve or disapprove of the person so elected and presented, which approbation or disapprobation shall be signified by him by message in writing under his hand to the said house of representatives; and in case such governor, lieutenant governor or commander in chief, shall disapprove of the person so elected and presented, or the person so elected and presented being approved as aforesaid shall happen to die, or by sickness or otherwise be disabled from officiating as speaker, in every such case, the said representatives so assembled, shall forthwith elect another person to be speaker of the house of representatives to be presented and approved, or disapproved, in manner as aforesaid, and so from time to time as often as the person so elected and presented shall be disapproved of, or happen to die, or become disabled as aforesaid.

Representatives to adjourn themselves not exceeding two days without leave.

And our further will and pleasure is, and we do by these presents of our more abundant grace for us, our heirs and successors, grant, ordain, and appoint, that it shall and may be lawful to and for the representatives assembled in any great or general court of our said province for the time being, for ever hereafter, to adjourn themselves from day to day, (and if occasion shall require) for the space of two days; but not for any longer time, than for the space of two days without leave from the governor, or in his absence from the lieutenant governor, or commander in chief of our said province for the time being, first had and obtained in that behalf, any thing in the said recited letters patent contained to the contrary thereof in any wise notwithstanding.

Provided always, that nothing in these presents contained shall extend, or be construed to extend, to revoke, alter, or prejudice the power and authority by the said recited letters patent granted to the governor of the said province for the time being, to adjourn, prorogue and dissolve all great and general courts or assemblies of our said province.

And lastly, we do by these presents, for us, our heirs and successors, grant that these our letters patent, or the enrolment, or exemplification thereof, shall be in and by all things good, firm, valid and effectual in the law according to the true intent and meaning thereof, notwithstanding the not rightly, or fully reciting, mentioning, or describing the said recited letters patent, or the date thereof, or any other omission, imperfection, defect, matter, cause or thing whatsoever to the contrary thereof in any wise notwithstanding.

In witness whereof, we have caused these our letters to be made patent, witness, William archbishop of Canterbury, and the rest of the guardians and justices of the kingdom at Westminster, the six and twentieth day of August, in the twelfth year of our reign.

By writ of privy seal.

COCKS.

THE

GENERAL LAWS AND LIBERTIES

OF

MASSACHUSETTS BAY.

CHAPTER I.

AN ACT RESPECTING TITLES TO HOUSES AND LANDS, &c. APRIL, 1634.

It was further ordered, that the constable, and four more of the chief inhabitants of every town, to be chosen by all the freemen there, at some meeting there, with the advice of some one or more of the next assistants shall make a surveying of the houses' backsides, cornfields, mowing ground, and other lands improved, or inclosed, or granted by special order of the court, of every free inhabitant there; and shall enter the same in a book (fairly written in words at length, and not in figures) with the several bounds, and quantities by the nearest estimation; and shall deliver a transcript thereof into the court, within six months now next ensuing; and the same so entered and recorded, shall be a sufficient assurance to every such free inhabitant, his and their heirs and assigns, of such estate of inheritance, or as they shall have in any such houses, lands, or frank tenements.—The like course shall be taken for assurance of all houses and town lots, of all such as shall be hereafter enfranchised; and every sale or grant of such houses or lots, as shall be from time to time entered into the said books, by the said constable and four inhabitants, or their successors (who shall be still supplied upon death or removal) of which entry the purchaser shall pay sixpence, and the like sum for a copy thereof, under the hands of the said surveyors, or three of them.

CHAPTER II.

ACTS RESPECTING FREEMEN AND SERVANTS. DEC. 1686.

SECT. 1. IT is ordered, that no servant shall be set free, or have any lot, until he have served out the time covenanted, under penalty of such fine, as the quarter courts shall inflict, unless they see cause to remit the same.

SECT. 2. It is ordered, that all towns shall take care to order, and dispose of all single persons, and inmates within their town, to service, or otherwise; and if any be grieved at the order of a town, the parties to have liberty to appeal to the governor and council, or the court.

SECT. 3. All persons of any trained band, both freemen and others, who have taken the oath of residents, or shall take the same, and being no covenant servant in household with any other, shall have their votes in nomination of those persons, who are to be appointed captains, or other inferiour officers of the same band; provided they nominate none, but such as shall be freemen, for it is the intent and order of the court, that no person shall henceforth be chosen to any office in the commonwealth, but such as is a freeman.

Any one magistrate may administer the said oath.

SECT. 4. This court, taking into serious consideration the great danger, and damage, that may accrue to the state, by all the freemen leaving their plantations, to come to the place of elections, have therefore ordered it, that it shall be free and lawful for all freemen, to send their votes for elections by proxy in the next general court in May, and so for hereafter, which shall be done in this manner; the deputy, which shall be chosen, shall cause the freemen of their towns to be assembled, and then to take such freemen's votes, as please to send by proxy, for every magistrate, and seal them up severally, subscribing the magistrate's name on the back side, and so to bring them to the court, sealed with an open roll of the name of the freeman, that so sends by proxy.

CHAPTER III.

ACT FOR KEEPING RECORDS OF JUDGMENTS AND EVIDENCE. SEPTEMBER, 1639.

WHEREAS many judgments have been given in our courts, whereof one hundred and ten records are kept of the evidence, and reasons whereupon the verdict, and judgment did pass, the records whereof being duly entered and kept, would be of good use for precedent to posterity, and a relief to such as shall have just cause to have their causes reheard, and reviewed.

It is therefore by this court ordered and declared, that henceforward, every judgment, with all the evidence, be recorded in a book, to be kept to posterity.

Item, that there be records kept of all wills, administrations, and inventories; as also of the days of every marriage, birth, and death of every person within this jurisdiction.

Item, to record all men's houses and lands, being certified under the hands of the men of every town, deputed for the ordering of their affairs.

CHAPTER IV.

ACTS RESPECTING CIVIL PRIVILEGES, AGE OF DISCRETION, &c.

SECT. 1. FORASMUCH as the free fruition of such liberties, immunities, privileges, as humanity, civility and christianity call for, as due to every man in his place and proportion, without impeachment and infringement, hath ever been, and ever will be, the tranquillity and stability of churches and commonwealth, and the denial or deprival thereof, the disturbance, if not ruin of both. The civil privileges of the inhabitants of this colony.

It is therefore ordered by this court and the authority thereof, that no man's life shall be taken away, no man's honour or good name shall be stained, no man's person shall be arrested, restrained, banished, dismembered, nor any way punished; no man shall be deprived of his wife or chil-

dren, no man's goods or estate shall be taken away from him, nor any way indamaged, under colour of law, or countenance of authority, unless it be by virtue or equity of some express law of the country warranting the same, established by a general court, and sufficiently published; or in case of the defect of a law, in any particular case, by the word of God. And in capital cases, or in cases concerning dismembering, or banishment, according to that word, to be judged by the general court. [1641.]

Age of discretion.

SECT. 2. It is ordered by this court and the authority thereof; that the age for passing away lands, or such kind of hereditaments, or for giving of votes, verdicts or sentences in any civil courts or causes, shall be one and twenty years, but in choosing guardians, fourteen years. And all persons of the age of one and twenty years, as aforesaid, and of understanding and memory, whether excommunicate, condemned, or other, shall have full power and liberty to make their wills and testaments, and other lawful alienations of their lands and estates. [1641. 47.]

Liberty to dispose estate.

Age for plaintiff and defendant.

SECT. 3. It is ordered by this court and the authority hereof, that the age for plaintiffs and defendants in civil cases, before any magistrate, commissioner or court of judicature, shall be twenty-one years of age, and for all persons under that age, their parents, masters, and guardians, as they shall see meet shall plead and defend their right and interest, as the matter may require; and in all criminal cases every person younger as well as elder shall be liable to answer in their own persons for such misdemeanours as they shall be accused of, and may also inform and present any misdemeanour to any magistrate, grandjuryman, or court, any law, custom or usage to the contrary notwithstanding. [October, 1668.]

CHAPTER V.

ACTS RESPECTING CIVIL ACTIONS.

Actions when triable.

SECT. 1. IT is ordered by this court and the authority thereof; that all actions of debt, accounts, slander, and actions of the case concerning debts and accounts, shall henceforth be tried, where the plaintiff pleaseth, so it be in the jurisdiction of that court, where the plaintiff or defendant dwelleth, unless by consent, under both their hands it doth appear, they would have the case tried in any other court. All other actions shall be tried, within that juris-

diction where the cause of the action doth arise. [May, 1642.]

Sect. 2. Whereas sundry inconveniences do arise by reason that plaintiffs in civil cases do delay to enter their actions, to the great expense of much precious time, and damage to the publick:

This court doth therefore order, that henceforth no action shall be entered after the first day of the court is ended. And in case any plaintiff shall delay his entry longer than the first forenoon of the court's sitting, every such person or persons shall pay double entry money. And all persons, whether parties or witnesses, are enjoined to attend their respective concerns in every court of justice, as well the first forenoon of the court, as afterwards; and shall present the whole plea and evidence before the case be committed to the jury, and no after plea or evidence shall be admitted to any person, any law, usage or custom to the contrary notwithstanding. And for that end, all marshals and constables are enjoined to make their returns of attachments by them served, sometime the first forenoon of the court that is to take cognizance of the case concerned therein. Provided, that the double entry money be paid by him that so neglects his entry, and not put the defendant to unnecessary charge through his default. [October, 1665.] Rule for entry of actions.

Sect. 3. In all actions of trespass, where damage shall be pretended, above forty shillings, and yet on the hearing thereof, it shall appear to the court to come under that value, in all such cases, the plaintiff shall lose his action, and pay the defendant cost. [October, 1650.] Actions of trespass under forty shillings.

Sect. 4. Every person impleading another, in any court of assistants or county court, shall pay the sum of ten shillings, before his case be entered; and for every action of above forty shillings value, triable before the commissioners of Boston, ten shillings; and for all actions under forty shillings, triable before the said commissioners, one magistrate, or the three commissioners, for ending small causes, ten groats, unless the court see cause to admit any to sue in forma pauperis. [1642. 52.] Fees for entry of actions.

Sect. 5. Whereas the country is put to great charge, by this court's attending suits commenced or renewed by petition or review.

It is ordered that in all such cases, if it appear to the court, that the plaintiff had no just cause of any such proceeding, the said plaintiff shall bear the whole charges of the court, both for time and expenses, which they shall judge to be expended by his occasion; and may further impose a fine upon him, as the merit of the cause shall require; but if they find the defendant in fault, they shall impose the just charges upon such defendant. Actions brought to the general court to bear the charge of the court.

Plaintiff liberty to withdraw his action.

SECT. 6. And in all actions brought to any court, the plaintiff shall have liberty to withdraw his action or to be nonsuited, before the jury have given in their verdict; in which case, he shall always pay full costs and charges to the defendant, and may afterward renew his suit at another court. [1641.]

Vexatious suits to pay treble damage and be fined forty shillings.

SECT. 7. And it is ordered, that no man in any suit or action against another shall falsely pretend great damages or debts, to vex his adversary; and in all cases where it appears to the court, that the plaintiff hath willingly and wittingly done wrong to the defendants in commencing and prosecuting any action, suit, complaint or indictment, in his own name, or in the name of others, he shall pay treble damages to the party grieved, and be fined forty shillings to the common treasury. [November, 1641. 46.]

Strangers liberty to try actions in any courts.

SECT. 8. Whereas it oftentimes comes to pass, that strangers coming amongst us have sudden occasions to try actions of several natures in our courts of justice, and in respect it is very chargeable to the parties, and troublesome to the country to call special courts for the determination of such cases: It is ordered by this court, and authority thereof, that from henceforth it shall be in the liberty of any stranger, upon legal summons, to enter any action against any person or persons, not residing or inhabiting amongst us, in any court within this jurisdiction. [1650.]

Clerk of the writs to require security of all persons in debt.

SECT. 9. It is ordered when any clerk of the writs shall grant any attachment in a civil case to any plaintiff lying in gaol upon execution for debt, he shall require sufficient security to answer the defendant's costs, as in case of strangers. [October, 1680.]

CHAPTER VI.

ACTS RESPECTING APPEALS.

Liberty to appeal

SECT. 1. IT is ordered by this court and the authority thereof: that it shall be in the liberty of every man cast, condemned or sentenced in any inferiour court, to make his appeal to the court of assistants: as also to appeal from the sentence of one magistrate, or other persons deputed to hear and determine small causes, unto the shire court of each jurisdiction, where the cause was determined. Provided they tender their appeal, and put in security before the judges of the court, to prosecute it to effect, and also to

before execution.

satisfy all damages, before execution granted; which shall not be till twelve hours after judgment, except by special order of the court. And if the cause be of a criminal nature; then also to put in security for the good behaviour and appearance at the same time: and if the point of appeal be in matter of law, then to be determined by the bench; if in matter of fact by the bench and jury. And if in the court of assistants, two of five, three of seven, or such a proportion of the magistrates then present, shall actually dissent from the sentence of the court in any capital offence, it shall then be in the liberty of the party sentenced, to appeal to the next general court.

In criminal cases to be bound to the good behaviour.

Appeals to the general court.

Sect. 2. It is further ordered; that all appeals with the security as aforesaid shall be recorded at the charge of the party appealing, and certified unto the court, to which they are made. And the party appealing shall briefly in writing (without reflecting on court or parties, by provoking language) under his own or his attorney's hand, give in to the clerk of the court from which he did appeal, the grounds and reasons of his appeal, six days before the beginning of the court to which he did appeal; to which court the said clerk shall return the said writing, and give copies thereof to the defendant if he desire the same. And whosoever shall appeal from the sentence of any court, and not prosecute the same to effect, according to law, shall besides his bond to the party, forfeit to the country, the sum of forty shillings for every such neglect. [1651.]

Appellant to give his reasons six days before.

Not prosecuting an appeal, forfeit forty shillings.

Sect. 3. And for a more clear and equal hearing and determining all cases of appeal; it is ordered, that no person that hath set as judge, or voted in any inferiour court, in that case he is appealed from, shall have any vote in the superiour court appealed to, but the case shall be determined by such as are no ways engaged in the same, by judging or voting formerly: provided there be more magistrates appealed to, then those that sat in the court appealed from. And in all cases of appeal, the court appealed to shall judge the case, according to former evidence, and no other, rectifying what is amiss therein; and where the matter of fact is found to agree with the former court, and the judgment according to law, not to revoke the sentence or judgment, but to abate or increase damages, as shall be judged right; any use or custom to the contrary notwithstanding. [1642. 47. 49. 50. 53. 54.]

No judge appealed from, may judge the action of appeal.

Error may be rectified, with reversing the former judgment.

Sect. 4. Forasmuch as daily experience tells us, that the proceedings of this court are constantly obstructed through the introducing of several particular cases of a private nature: the work of this court being properly to attend matters of a more publick concernment; this court doth therefore order, that no court shall transfer the case coming before them proper to the cognizance of such a court,

whether they are civil or criminal; but if there be difficulty in any case, the court shall state the question, leaving out the parties' names, and bring it to the general court, where it may be resolved, and the court or courts, that shall so state difficult cases shall suspend their judgment of the case till the court doth meet again; which court, upon the resolution of the general court, may proceed to judgment or sentence. [1654.]

CHAPTER VII.

AN ACT RESPECTING PARTIES APPEARANCE IN COURT.

Immunity from punishment in case of inevitable obstruction.

It is ordered by this court and the authority thereof; that no man shall be punished for not appearing at or before any civil assembly, court, council, magistrate or officer, nor for the omission of any office or service; if he shall be necessarily hindered, by any apparent act or providence of God, which he could neither foresee nor avoid; provided that this law shall not prejudice any person of his just cost and damage in civil action. [1641.]

CHAPTER VIII.

ACTS RESPECTING ARRESTS AND BAIL.

None to be kept in prison for debt that have not to satisfy.

Sect. 1. It is ordered by this court and the authority thereof; that no man's person shall be arrested or imprisoned for any debt or fine, if the law can find any competent means of satisfaction, otherwise from his estate, (except in special contracts, as in the law of payments) and if not, his person may be arrested and imprisoned, where he shall be kept at his own charge, not the plaintiff's, till satisfaction be made, unless the court that had cognizance of the cause, or some superiour court shall otherwise determine; provided nevertheless, that no man's person shall be kept in prison for debt, but when there is an appearance of some estate which he will not produce, to which end, any court or commissioners authorized by the general court may administer an oath

to the party, or any other suspected to be privy in concealing his estate, but shall satisfy by service if the creditor require it; but shall not be sold to any but of the English nation. [1641. 47.]

The keepers discharge of prisoners in case.

Sect. 2. It is ordered, that when any persons are committed to prison in any civil action, the keepers of the prison shall not stand charged with their supply of victuals, or other necessaries. And in case the prisoner hath no estate, and will be deposed before any magistrate, that he is not worth five pounds, the plaintiff shall provide for his relief, or otherwise the keeper shall not stand charged with him: and all such charges the plaintiff shall have power to levy with the execution, before the party be delivered from prison.

Sect. 3. Complaint being made to this court, of abuse offered to justice, through liberty granted, by the keepers of the prisons, to such persons as stand committed for payment of fines, and on execution granted in civil cases:

Keepers of prisoners danger.

This court do order; that no person or persons committed as abovesaid, shall be permitted by the keeper of the prison, to go at liberty without the precincts of the prison, but by the license of the court that committed him, or of the creditor for whom execution is granted; on penalty of paying the fine imposed, and satisfaction of the execution in any civil case. [1662.]

Keepers liberty to take bail.

Sect. 4. It is ordered, that the keeper of the prison for the time being, shall henceforth have the same liberty that the marshal hath in all civil cases; to take sufficient bail after commitment, as the marshal might before commitment. [1662.]

CHAPTER IX.

ACTS RESPECTING ATTACHMENT, SUMMONS, &c.

Plaintiff's liberty to take summons or attachments. Foreign plaintiffs to put in security.

It is ordered by this court and authority thereof; that it shall be the liberty of every plaintiff, to take out either summons or attachments against any defendant; provided no attachment shall be granted in any civil action, to any foreigner, against a settled inhabitant in this jurisdiction, before he hath given sufficient security or caution, to prosecute his action, and to answer the defendant such costs, as the court shall award him.

Sect. 1. And it is further ordered that in all attachments of goods and chattels, or of lands and hereditaments, legal

notice shall be given to the party, or left in writing at his house or place of usual abode, otherwise the suit shall not proceed; notwithstanding, if he be out of this jurisdiction, the cause shall then proceed to trial, but judgment shall not be entered before the next court, and if the defendant do not then appear, judgment shall be entered, but execution shall not be granted before the plaintiff hath given security to be responsal to the defendant, if he shall reverse the judgment within one year, or such further time as the court shall limit. [October 1644.]

Execution respited.

Sect. 2. And it is hereby declared, that no summons, pleading, judgment, or any kind of proceeding in courts or course of justice, shall be abated, arrested or reversed upon any kind of circumstantial errors or mistakes, if the person and cause be rightly understood and intended by the court. And in all cases where the first summons are not served six days inclusively before the court, and the case briefly specified in the warrant, where appearance is to be made by the party summoned, it shall be at his liberty whether he will appear or not, except all cases that are to be handled in court suddenly, called on extraordinary occasion.

Circumstantial errors.

Summons to be served six days before the court.

Sect. 3. And whereas suits at law, many times such as do prosecute the same in their own name, in procuring the process; intend and do declare in the name, and on the behalf of others, viz. as executors, administrators, assigns, attorneys, guardians, agents or the like, which is not only improper, but tendeth also to uncertainty; for prevention whereof:

In whose name to take out process.

It is ordered, that henceforth the original process, whether summons or attachments, shall express in whose name the plaintiff sueth, whether in his own name, or as executor of the last will and testament of such a man, or administrator of the goods and chattels of such a man, or assignee, attorney, guardian or agent of such a man, or the like, or otherwise, if exception be taken before the parties join issue, it shall be good, and the plaintiff shall be liable to pay cost. [1641. 44. 47. 51.]

Sect. 4. Whereas it hath been commonly practised, that attachments have been directed to the marshal to be served in any town under the jurisdiction of that court whereof the marshal is officer, notwithstanding the law doth order, that all attachments shall be directed to the constable in such towns where no marshal dwells:

Marshals may serve attachments.

It is hereby ordered and declared, that the said custom shall be accounted legal, and shall not abate the proceeding or trial of any cause. Provided no more costs be charged on the defendant, than by law are due to constables for serving attachments. [October, 1662.]

Sect. 5. Upon information of some inconveniences accrued and more that may accrue to several persons, that

men take themselves acquitted and free from all legal obligations in case of appearance in courts according to the express terms of the bond, or at most if the principal there stay till verdict and judgment be given; which if they be, they may then make away their estates, or absent their persons before the twelve hours be expired for granting execution, whereby the party recovering may either be deprived of, or much damaged in, his just rights: it is therefore ordered by this court and the authority thereof, that henceforth all goods attached upon any action, shall not be released upon the appearance of the party or judgment, but shall stand engaged until the judgment or the execution granted upon the said judgment be discharged, nor shall any surety or sureties for appearance in any court (except in capital or criminal cases) be released from his or their bond, until the execution as aforesaid be discharged and satisfied, or the principal person be surrendered into the hands of the marshal or his deputy, who shall secure him till the judgment be discharged, any law, custom or usage to the contrary notwithstanding. [October, 1650.]

Goods attached not to be released till execution be discharged.

Sect. 6. Whereas the marshals' oath requires them to make return of such attachments as they serve to the courts to which they are returnable, which in many cases are very chargeable and troublesome. It is therefore ordered, that henceforth marshals and constables shall be obliged to make their return upon the backside of the attachment, and the same deliver up to the plaintiff, or his order, sealed up when demanded, giving first a copy thereof to the defendant if he desires it, and that no marshal or constable shall be bound to serve any attachment till they have their fees paid them which the law allows, any law, usage or custom to the contrary notwithstanding, and the aforesaid clause in the marshal's oath relating to the return of attachment to the court, is hereby repealed and declared disobliging. [1675.]

Marshal's direction to make return of associates, &c.

CHAPTER X.

AN ACT RESPECTING BARRATRY.

It is ordered and decreed, and by this court declared; that if any man be proved and judged a common barrator, vexing others with unjust, frequent and endless suits, it shall be in the power of the court, both to reject his cause, and to punish him for his barratry. [1641.]

Barratry

CHAPTER XI.

AN ACT RESPECTING BENEVOLENCE, OR CHARITABLE DONATIONS.

SECT. 1. IT is ordered, that this court hereafter will grant no benevolence, except in foreign occasions, and when there is money in the treasury sufficient, and our debts first satisfied. [1641.]

Gifts and legacies to be faithfully disposed of.

SECT. 2. It is ordered by this court and the authority thereof; that all gifts and legacies given and bequeathed to the college, schools of learning or any other publick use; shall be truly and faithfully disposed of according to the true and declared intent of the donors. And all and every person or persons betrusted to receive or improve any such gifts or legacies, shall be liable from time to time to give account of their disposal and management thereof to the courty court of that shire where they dwell, and where such estate shall lie, who are hereby empowered to require the same where need shall be, and to appoint feoffees of trust, to settle and manage the same according to the will of the donors.

CHAPTER XII.

ACTS RESPECTING BILLS ASSIGNED AND BOND SLAVERY.

Bills assigned good debt to the assignee.

SECT. 1. IT is ordered by the authority of this court, that any debt or debts due upon bill or other specialty assigned to another, shall be as good a debt and estate to the assignee, as it was to the assignor, at the time of its assignation; and that it shall be lawful for the said assignee, to sue for, and recover the said debt due upon bill, and so assigned, as fully as the original creditor might have done; provided the said assignment be made upon the back side of the bill or specialty. [1647.]

No bond slavery.

SECT. 2. It is ordered by this court, and the authority thereof; that there shall never be any bond slavery, villanage or captivity amongst us, unless it be lawful captives taken in just wars, as willingly sell themselves or are

sold to us, and such shall have the liberties and christian usage which the law of God established in Israel concerning such persons doth morally require; provided this exempts none from servitude, who shall be judged thereto by authority. [1641.]

Sect. 3. The general court conceiving themselves bound by the first opportunity to bear witness against the heinous, and crying sin of man stealing, as also to prescribe such timely redress for what is past, and such a law for the future, as may sufficiently deter all others belonging to us to have to do in such vile, and most odious courses, justly abhorred of all good and just men, do order, that the negro interpreter, with others unlawfully taken, be by the first opportunity, at the charge of the country for the present, sent to his native country (Guinea) and a letter with him of the indignation of the court thereabouts, and justice thereof desiring our honoured governor would please to put this order in execution. [1646.]

CHAPTER XIII.

AN ACT RESPECTING BOUNDS OF TOWN LANDS.

Sect. 1. Forasmuch as the bounds of towns, and of the lands of particular persons, are carefully to be maintained, and not without great danger to be removed by any, which notwithstanding by deficiency and decay of marks, may at unawares be done, whereby great jealousies of persons, trouble in towns, and incumbrances in courts do often arise, which by due care and means might be prevented:

It is therefore ordered by this court and the authority thereof, that every town shall set out their bounds, within twelve months after their bounds are granted: and that when their bounds are once set out, once in three years, three or more persons of a town, appointed by the select men, shall appoint with the adjacent towns, to go the bounds betwixt their said towns and renew their marks; which marks shall be a great heap of stones, or a trench of six foot long and two foot broad, the most ancient town to give notice of the time and place of meeting for this perambulation; which time shall be in the first or second month, upon pain of five pounds for every town that shall neglect the same; provided that the three men appointed for perambulation shall go in their several quarters, by order of the select men, and at the charge of the several towns.

Town bounds to be laid out once in one year.

To be surveyed within three years.

Particular persons' bounds to be surveyed once a year.

SECT. 2. And it is further ordered, that if any particular proprietor of lands lying in common with others, shall refuse to go the bounds betwixt his land and other mens' once a year in the first or second month, being requested thereunto upon one week's warning, he shall forfeit for every day so neglecting, ten shillings, half to the party moving thereto, the other half to the town.

CHAPTER XIV.

AN ACT RESPECTING THE BREACH OF THE PEACE.

Breach of peace.

FOR the better preserving of peace, and every man's liberty and safety in this jurisdiction, and to the end that all fighting and quarrelling and disturbance may be avoided:

It is by this court ordered, and by the authority thereof enacted, that no person shall beat, hurt or strike any other person, upon penalty of paying to the party stricken, by fine to the county where the offence is committed, or both, such sum or sums as the county court, magistrate, commissioner or associate, that take cognizance thereof shall determine: and because in this case several circumstances may alter the degree of the offence, as who do smite, who is smitten, with what instrument, the danger of the wound, more or less, time, place and provocation, and other the like, it is left to the discretion of the judges aforesaid, upon hearing and consideration, to impose such penalty or penalties, as in their discretion shall seem just, equal and proportionable to the merit of the offence.

CHAPTER XV.

AN ACT AS TO JUDGMENT RESPECTING REAL ESTATE.

Judgment for title of house or land.

IT is declared and ordered by this court and the authority thereof, that where a judgment is given in any court for any person of house or land, upon the trial of the title thereof; if the person against whom the judgment is given, doth either forcibly keep possession thereof still after execution

served, or enter upon it again, and so retain possession by force, he shall be counted a high offender against the law, and breaker of the publick peace; therefore speedily to redress such a criminal offence, every magistrate is empowered, and by his place hath power to give warrant and command to the marshal, officers and other men whom he thinks meet to be employed in the business (the marshal also requiring aid, greater or lesser, as need requires) and suppress the force, and give possession to the owner, and to imprison such as do appear to be delinquents, and their aiders and abettors, to be forth coming at the next court that did give the judgment in the case, there to make their answer: and whom the court doth find guilty, to set such fine or other punishment upon them as the merit of their several cases doth require.

CHAPTER XVI.

ACTS RESPECTING BRIDGES.

SECT. 1. THIS court considering that bridges in country highways are for the benefit of the country in general, and that it may be unequal to lay the charge thereof on particular towns:

Doth order, that from time to time, upon information or complaint to each county court, of the necessity or defect of any bridge or bridges as aforesaid; the court shall appoint a committee to view and determine the same, and the charges shall be proportioned by the magistrates in each county court, to be levied upon the several towns in each county according to the direction of the law for country rates. Bridges to be made and repaired by the county.

SECT. 2. The court considering the great danger that persons, horses, teams, are exposed to, by reason of defective bridges, and country highways in this jurisdiction:

Doth order and declare, that if any person at any time, lose his life, in passing any such bridge or highway, after due warning given unto any of the selectmen of the town in which such defect is, in writing under the hand of two witnesses, or upon presentment to the shire court, of such defective ways or bridges, that then the county or town which ought to secure such ways or bridges, shall pay a fine of one hundred pounds to the parents, husband, wife or children, or next of kin to the party deceased. And if any Penalty for damage received by the insufficiency of bridges.

person lose a limb, break a bone, or receive any other bruise or breach in any part of his body, through such defect as aforesaid; the county or town, through whose neglect such hurt is done, shall pay to the party so hurt, double damages, the like satisfaction shall be made for any team, cart or cartage, horse, other beast or loading, proportionable to the damage sustained as aforesaid.

Sect. 3. And for the prevention of danger, which may come by the insufficiency of bridges and passages which lie upon town highways, the care whereof doth belong either to the town or particular persons to repair, who many times cannot procure workmen to do the same:

Power to press workmen to repair bridges.

It is therefore ordered by this court, that upon the complaint of any such town or person, to any one magistrate, he shall hereby be empowered to issue out warrants to the constable, to impress such workmen in their township, as shall be needful to secure and repair the same, who shall be paid for their work, either by the town or persons, to whom such bridges or passages do belong. [1648. 51. 58. 59.]

CHAPTER XVII.

ACTS RESPECTING BURGLARY, ROBBERY AND THEFT.

Robbing in house, highways, penalty.

Sect. 1. Forasmuch as many persons of late years, have been and are apt to be injurious to the goods and lives of others, notwithstanding all care and means to prevent and punish the same:

It is therefore ordered by this court and the authority thereof, that if any person shall commit burglary, by breaking up any dwelling house, or shall rob any person in the field or highways, such person so offending, shall for the first offence, be branded on the forehead with the letter (B) and if he shall offend in the same kind the second time, he shall be branded as before, and also be severely whipped; and if he shall fall into the like offence the third time, he shall be put to death, as being incorrigible.

On the Lord's day.

And if any person shall commit such burglary, or rob in the fields or houses on the Lord's day, besides the former punishment of branding, he shall for the first offence have one of his ears cut off; and for the second offence in the same kind, he shall lose his other ear in the same manner; and for the third offence he shall be put to death. [1642. 47.]

SECT. 2. For the prevention of pilfering and theft: it is ordered by this court and the authority thereof; that if any person be taken or known to rob any orchard or garden; that shall hurt or steal away any grafts or fruit trees, fruits, linen, woollen or any other goods left out in orchards, gardens, backsides, or in any other place in house or fields, or shall steal any wood or other goods from the water-side, from men's doors or yards; he shall forfeit treble damage to the owners thereof.

Rob orchard or garden or steal goods.

Pay treble damage,

And if they be children, or servants, that shall trespass herein, if their parents or masters will not pay the penalty before expressed, they shall be openly whipped.

or be whipt.

And forasmuch as many times it so falls out that small thefts and other offences of a criminal nature are committed both by English and Indians in towns remote from any prison or other fit place to which such malefactors may be committed until the next court:

It is therefore ordered that any magistrate, upon complaint made to him may hear, and upon due proof determine, any such small offences of the aforesaid nature according to the laws here established, and give warrant to the constable of that town where the offender lives to levy the same; provided the damage or fine exceed not forty shillings; provided also it shall be lawful for either party to appeal to the next court to be holden in that jurisdiction, giving sufficient caution to prosecute the same to effect, at the said court. And every magistrate shall make a return yearly to the county court where he liveth, of what cases he hath so ended. And also the constables of all such fines as they have received.

One magistrate may determine such cases.

Magistrate and constables to return to the county court.

And where the offender hath nothing to satisfy, such magistrate may punish by stocks or whipping, as the cause shall deserve, not exceeding ten stripes; it is also ordered, that all servants and workmen embezzling the goods of their masters or such as set them on work, shall make restitution, and be liable to all laws and penalties as other men. [1646.]

Servants and workmen.

SECT. 3. It is further ordered by this court; that what person soever shall steal from any person, any coin, goods or chattels, to the value of ten shillings or upward, shall be whipt, or pay such a sum or sums of money as the court or magistrate, that hath proper cognizance thereof shall adjudge to be sufficient to satisfy all costs and charges of the court and country in prosecuting and trying the said offender, to the use of the common treasury; and for smaller thefts, it is left to the discretion of the judge or judges that shall have cognizance of the crime, to appoint smaller mulcts or punishments, or only legal admonitions as they shall find cause. [May, 1652.]

Stealing above ten shillings.

Constable to make search for goods stolen.

Sect. 4. And further it is declared and ordered, that when any goods are stolen from any person, the constable of the town, by warrant from authority, shall search for the same, in any suspected places or houses, and upon search or otherwise, if he shall find the same or any part thereof, or any ground of suspicion appearing to the officer, he shall bring the delinquent or suspected party to a magistrate to be proceeded with according to the law. And if any person having goods stolen from him, shall privately receive his said stolen goods (except the fact be private, or committed by some member of his own family) and so smother the theft, and shall not legally prosecute the offender, he shall forfeit to the common treasury the goods or chattels so received or the true value thereof. [1652.]

Concealing of theft and receiving satisfaction privately.

Penalty.

Sect. 5. Whereas in the law tit. Burglary, it is expressed if any person shall commit burglary by breaking open any dwelling house:

It is ordered by this court and the authority thereof, as an addition to that law; that if any person shall break up any warehouse, shop, mill, malt house, barn or out house, or any vessel on any shore, or in any cove, creek, or upon the water, such person so offending, shall be punished as the law provides in case of breaking up dwelling houses. [May, 1672.]

Addition to the law tit. Burglary.

CHAPTER XVIII.

ACTS RESPECTING CAPITAL CRIMES.

Idolatry.

Sect. 1. If any man after legal conviction shall have or worship any other God but the Lord God, he shall be put to death, Exod. 22. 20. Deut. 13. 6, 10. Deut. 17. 2, 6.

Witchcraft.

Sect. 2. If any man or woman be a witch, that is, hath or consulteth with a familiar spirit, they shall be put to death, Exod. 22. 18. Levit. 20. 27. Deut. 18. 10, 11.

Blasphemy.

Sect. 3. If any person within this jurisdiction, whether christian or pagan, shall wittingly and willingly presume to blaspheme the holy name of God, Father, Son, or Holy Ghost, with direct, express, presumptuous, or high handed blasphemy, either by wilful or obstinate denying the true God, or his creation, or government of the world, or shall curse God in like manner, or reproach the holy religion of God, as if it were but a politick device; to keep ignorant men in awe; or shall utter any other kind of blasphemy of

the like nature and degree, they shall be put to death, Levit. 24. 15, 16.

Sect. 4. If any person shall commit any wilful murder upon premeditate malice, hatred or cruelty, not in a man's necessary and just defence, nor by mere casualty against his will, he shall be put to death, Exod. 21. 12, 13. Numb. 35. 31. Murder.

Sect. 5. If any person slayeth another suddenly, in his anger or cruelty of passion, he shall be put to death, Levit. 24. 17. Numb. 35. 20, 21.

Sect. 6. If any person shall slay another through guile, either by poisoning or other such devilish practice, he shall be put to death, Exod. 21. 14. Poisoning.

Sect. 7. If any man or woman shall lie with any beast or brute creature, by carnal copulation, they shall surely be put to death, and the beast shall be slain and buried, and not eaten, Levit. 20. 15, 16. Bestiality.

Sect. 8. If any man lyeth with man-kind as he lyeth with a woman, both of them have committed abomination, they both shall surely be put to death, unless the one party were forced, or be under fourteen years of age, in which case he shall be severely punished, Levit. 20. 13. Sodomy.

Sect. 9. If any person commit adultery with a married or espoused wife, the adulterer and the adulteress shall surely be put to death, Levit. 20. 19. & 18. 20. Deut. 22. 23, 27. Adultery.

Sect. 10. If any man stealeth a man or man-kind, he shall surely be put to death, Exod. 21. 16. Man-stealing.

Sect. 11. If any man rise up by false witness wittingly, and of purpose to take away a man's life, he shall be put to death, Deut. 19. 16. & 18. 16. False witness.

Sect. 12. If any man conspire and attempt any invasion, insurrection or public rebellion against our commonwealth: or shall endeavour to surprise any town or towns, fort or forts therein; or shall treacherously and perfidiously attempt the alteration and subversion of our frame of polity or government fundamentally, he shall be put to death, Numb. 16. 2 Sam. 3. 2 Sam. 18. 2 Sam. 20. Conspiracy. Rebellion.

Sect. 13. If any child or children above sixteen years old, and of sufficient understanding, shall curse or smite their natural father or mother, he or they shall be put to death, unless it can be sufficiently testified, that the parents have been very unchristianly negligent in the education of such children, or so provoked them by extreme and cruel correction, that they have been forced thereunto to preserve themselves from death or maiming, Exod. 21. 17. Levit. 20. 9. Exod. 21. 15. Children curse or smite parents.

Sect. 14. If a man have a stubborn or rebellious son of sufficient years of understanding (viz.) sixteen years of age, which will not obey the voice of his father, or the voice of Rebellious son.

his mother, and that when they had chastened him, will not hearken unto them, then shall his father and mother, being his natural parents, lay hold on him, and bring him to the magistrates assembled in court, and testify unto them, that their son is stubborn and rebellious, and will not obey their voice and chastisement, but lives in sundry and notorious crimes: such a son shall be put to death, Deut. 22. 20, 21. [November, 1646.]

Rape.

SECT. 15. If any man shall ravish any maid, or single woman, committing carnal copulation with her by force, against her own will; that is above the age of ten years, he shall be punished either with death or with some other grievous punishment according to circumstances, as the judges or general court shall determine. [1649.]

Rape of a child.

SECT. 16. Forasmuch as carnal copulation with a woman child, under the age of ten years, is a more heinous sin than with one of more years, as being more inhumane and unnatural in itself, and more perilous to the life and well being of the child:

It is therefore ordered by this court and the authority thereof, that whosoever he be shall commit or have carnal copulation with any such child under ten years old, and be legally convicted thereof, he shall be put to death. [October, 1669.]

Non-appearance in a capital crime.

SECT. 17. If any person shall be indicted for any capital crime, (who is not then in durance) and shall refuse to render his person to some magistrate within one month after three proclamations publickly made in the town where he usually abides, there being a month between proclamation and proclamation: his lands and goods shall be seized to the use of the common treasury, till he make his lawful appearance. And such withdrawing of himself, shall stand instead of one witness to prove his crime, unless he can make it appear to the court that he was necessarily hindered. [November, 1646.]

Burning of houses made felony.

SECT. 18. Whereas some dwelling houses, and other houses within this jurisdiction, have been set on fire, and the means or occasions thereof not discovered, though some persons have been vehemently suspected to have been instrumental therein: the court taking into consideration the danger of such a wicked enterprise, especially in towns where the houses are near adjoining, and there being no law yet provided for the punishment of so heinous a crime, doth therefore hereby order, and be it enacted, by the authority of this court, that any person or persons whatsoever, of the age of sixteen years and upwards, that shall after the publication hereof, wittingly and willingly set on fire any barn, stable, mill, out houses, stacks of wood, corn or hay, or any other thing of like nature, shall upon due conviction by testimony or confession, pay double damage to the party damni-

fied, and be severely whipt; and if any person of the age aforesaid, shall after the publication hereof, wittingly, willingly and feloniously set on fire any dwelling house, meeting house, store house, or shall in like manner set on fire any out house, barn, stable, leanto, stacks of hay, corn or wood, or any thing of the like nature, whereby any dwelling house, meeting house, or store house comes to be burnt, the party or parties vehemently suspected thereof shall be apprehended by warrant from one or more of the magistrates, and committed to prison, there to remain without bail until the next court of assistants, who upon legal conviction by due proof or confession of the crime, shall adjudge such person or persons to be put to death, and to forfeit so much of his lands goods or chattles, as shall make full satisfaction to the party or parties damnified. [May, 1652.]

Blasphemy.

SECT. 19. Albeit faith be not wrought by the sword, but by the word; and therefore such pagan Indians as have submitted themselves to our government, though we would not neglect any due helps to bring them on to grace and to the means of it; yet we compel them not to the christian faith, nor to the profession of it, either by force of arms, or by penal laws: nevertheless, seeing the blaspheming of the true God cannot be excused by any ignorance, or infirmity of human nature, the eternal power and Godhead being known by the light of nature, and the creation of the world; and common reason requireth every state and society of men to be more careful of preventing the dishonour and contempt of the most high God, (in whom we all consist) than of any mortal princes, or magistrates: it is therefore ordered, and decreed by this court for the honour of the eternal God, whom only we worship, and serve, that no person within this jurisdiction, whether christian, or pagan, shall wittingly, and willingly presume to blaspheme his holy name, either by wilful, or obstinate denying the true God, or his creation, or government of the world, or shall curse God, or reproach the holy religion of God, as if it were but a publick device to keep ignorant men in awe, nor shall utter any other eminent kind of blasphemy of the like nature, and degree. If any person, or persons whatsoever within our jurisdiction shall break this law, they shall be put to death. [Nov. 1646.]

Treason punished with death

SECT. 20. It being the duty as well as the practice of all good subjects to provide for the safety and security of the person, crown and dignity of their sovereign princes, this court being sensible of their duty and obligation to our sovereign lord the king:

Do hereby order and enact that whatsoever person within this jurisdiction shall compass, imagine or intend the death or destruction of our sovereign lord the king, whom almighty God preserve with a long and prosperous reign, or to deprive or depose him from the style, honour or kingly name of the

imperial crown of England, or of any other his majesty's dominions, and such compassings, imaginations, devices or intentions shall express, utter or declare by printing, preaching or malicious and advised speaking, being legally convicted thereof upon the oaths of two lawful and credible witnesses, upon trial, or otherwise convicted by due course of law, then every such person or persons so offending shall be declared and adjudged to be traitors, and shall suffer the pains of death. [May, 1678.]

CHAPTER XIX.

ACTS RESPECTING CATTLE, FIELDS, AND FENCES.

Owner make good his fence. No cattle to be put in till corn be out.

SECT. 1. IT is ordered by this court and the authority thereof: that in all corn fields, which are inclosed in common, every party interested therein, shall from time to time make good his part of the fence, and shall not put in any cattle, so long as any corn shall be upon any part of it, upon pain to answer all the damage that shall come thereby. [1647.]

Occupiers of land may order common fields.

SECT. 2. Whereas it is found by experience, that there hath been much trouble and difference in several towns, about the fencing, planting, sowing, feeding and ordering of common fields:

Liberty to fence in several.

It is therefore ordered by this court and the authority thereof; that where the occupiers of the land, or the greatest part thereof, cannot agree about the fencing or improvement of such their said fields, that then the selectmen in the several towns shall order the same, or in case where no such are, then the major part of the freemen (with what convenient speed they may) shall determine any such difference as may arise upon any information given them by the said occupiers, excepting such occupiers' land shall be sufficiently fenced by itself, which any occupier of land may lawfully do. [1643. 47.]

SECT. 3. Whereas this court hath long since provided, that all men shall fence their corn, meadow, ground and such like, against great cattle, to the end the increase of cattle, especially of cows, and their breed should not be hindered, there being then but few horses in the country, which since are much increased, many whereof run in a sort wild, doing much damage in corn and other things, notwithstanding fence made up according to the true intent of the order in

that case established, many whereof are unknown, most so unruly that they can by no means be caught or got into custody, whereby their owners might answer damages, and if sometimes with much difficulty and charge they be, they are in danger of perishing before the owner appears or can be found out, all which to prevent:

It is ordered by this court and the authority thereof; that every town and peculiar in this jurisdiction, shall henceforth give some distinct brand-mark, appointed by this court, (a copy of which marks, each clerk of the writs in every town shall keep a record) upon the horn, or left buttock, or shoulder of all their cattle which feed in open common without constant keepers, whereby it may be known to what town they do belong. And if any trespass not so marked, they shall pay double damages: nor shall any person knowing, or after due notice given of any beast of his to be unruly in respect of fences, suffer such beast to go common, or against corn fields, or other impropriate inclosed grounds fenced as aforesaid, without such shackles or fetters as may restrain and prevent trespass therein by them from time to time. And if any horse or other beast trespass in any corn or other inclosure, being fenced in such sort as secures against cows, oxen and such like orderly cattle; the party or parties trespassed shall procure two sufficient inhabitants of that town, of good repute and credit, to view and adjudge the harms, which the owner of the beast shall satisfy when known upon reasonable demand, whether the beast were impounded or not: But if the owner be known, and near residing, as in the same town or the like, he shall forthwith have notice of the trespass and damage charged upon him, that if he approve not thereof, he may nominate one such man, who with one other chosen by the party damnified, as aforesaid, shall review and adjudge the harms; provided they agree of damage within one day after due notice given, and that no after harms intervene to hinder it, which being forthwith discharged, together with the charge of the notice, former view and determination of damage, the first judgment to be void, or else to stand good in law; provided notwithstanding, the party trespassed shall not be barred of his action, albeit the harms be not viewed and judged according to the direction aforesaid.

Every town to have a distinct mark for cattle.

Cattle not marked trespassing pay double damage.

Unruly cattle to go in fetters.

Harms to be viewed by sufficient men.

Notice to be given to the owner of the beast.

And if any cattle be found damage feasant, the party damnified may impound or keep them in his own private close or yard, till he may give notice to the owner, and if they cannot agree, the owner may replevy them, or the other party may return them to the owner, and take his remedy according to law; yet in case of involuntary trespasses, where such trespasser shall pay, or legally tender full recompense for all the damage done by him before any suit commenced, the plaintiff shall recover no cost of his suit.

In voluntary trespass pay no cost.

And in all trespasses or damages done to any man, if it can be proved to be done by the mere default of him to whom the damage is done, it shall be judged no trespass, nor any damage given for it. [1646.]

Goats pay double damage.

SECT. 4. For all harms done by goats, there shall be double damage allowed, and when any goats are taken in corn or gardens, the owner of such corn or garden, may keep and use the said goats till full satisfaction be made by the owners. [1646.]

SECT. 5. Forasmuch as complaints have been made of a very evil practice of some disordered persons in the country, who use to take other men's horses, sometimes upon the commons, and sometimes out of their own grounds and inclosures, and ride them at their pleasure without any leave or privity of the owners:

Riding or working other men's horse or cattle without leave.

It is therefore ordered and enacted by the authority of this court, that whosoever shall take any other man's horse, mare, ass, or drawing beast, either out of his inclosure, or upon any common or elsewhere, (except such be taken damage feasant and disposed of according to law) without leave of the owner, and shall ride or use the same, he shall pay to the party wronged treble damages, or if the complainant shall desire it, then to pay only ten shillings, and such as have not to make satisfaction, shall be punished by whipping, imprisonment or otherwise, as by law shall be adjudged; and any one magistrate or county court may hear and determine the same. [1647.]

Penalty treble damage or whip.

SECT. 6. For the better preserving of corn from damage, by all kind of cattle, and that all fences of corn fields may from time to time be sufficiently upheld and maintained:

Selectmen to order the repair of fences.

It is ordered by this court, that the selectmen of all towns shall make wholesome orders, for the repairing of all fences both general and particular, within their several townships, excepting fences belonging to farms of one hundred acres or above, and have power to impose fines upon all delinquents, not exceeding twenty shillings for one offence; and if any selectmen shall neglect to make orders as aforesaid, they shall forfeit five pounds to the use of the town, and so for every month's default from time to time, and the

To appoint viewers of common fences.

said selectmen of every town shall appoint, from year to year, two or more (if need require) of the inhabitants thereof, to view the common fences, of all their corn fields, to the end, to take due notice of the real defects and insufficiency thereof, who shall forthwith acquaint the owners

To give notice of defect to the owners.

thereof with the same; and if the said owners do not within

Owners to repair within six days.

six days time or otherwise as the select men shall appoint, sufficiently repair their said defective fences; then the said two or more inhabitants appointed as aforesaid, shall forthwith repair or renew them, and shall have double recompense for all their labour, care, cost and trouble, to be paid

by the owners of the said insufficient fence or fences, and shall have warrant from the said selectmen, directed to the constable to levy the same, either upon the corn or other estate of the delinquent: provided the defect of the fence or fences be sufficiently proved by two or three witnesses. [1647. 53.]

Else the viewers to mend them and have double recompense.

Sect. 7. Where lands lie in common unfenced, if one man shall improve his land, by fencing in several, and another shall not, he who shall so improve, shall secure his land against other men's cattle, and shall not compel such as join upon him to make any fence with him, except he shall also improve in several as the other doth. And where one man shall improve before his neighbour, and so make the whole fence, if after his said neighbour shall improve also, he shall then satisfy for half the other's fence against him, according to the present value, and shall maintain the same; and if the first man shall after lay open his said field, then the said neighbour shall enjoy his said half fence so purchased to his own use, and shall also have liberty to buy the other half fence, paying according to present valuation, to be set by two men chosen, by either party one: the like order shall be where any man shall improve land against any town common. Provided this order shall not extend to house lots not exceeding ten acres; but if such one shall improve, his neighbour shall be compellable to make and maintain one half of the fence between them, whether he improve or not. Provided also, no man shall be liable to satisfy for damage done in any ground not sufficiently fenced, except it shall be for damage done by swine, or calves under a year old, or unruly cattle which will not be restrained by ordinary fences, or where any man shall put his cattle, or otherwise voluntarily trespass upon his neighbour's ground: and if the party damnified find the cattle damage feasant, he may impound or otherwise dispose of them. [1642.]

Partition fence between neighbours, borne by both.

House lots' fences.

Insufficient fence no damage except by swine and calves.

Sect. 8. Whereas the laws published concerning fences and cattle, being in the second edition, transported from their first order and method, much difficulty doth many times arise concerning the true meaning thereof, whereby great damages do accrue to many of the inhabitants, and consequently to the country: for prevention whereof:

This court doth order and enact, that where any cattle shall trespass on any propriety, not appearing to be sufficiently fenced against swine sufficiently yoked and ringed, or cows and such cattle as will be restrained by a sufficient fence, in the judgment of the viewers of the fences, in all such cases the owners of the fence, or of the land, shall bear all such damages, as to them thereby sustained, any thing in the said order, or any other law,

Fence to secure corn fields.

custom or usage to the contrary notwithstanding. [May, 1662.]

Sect. 9. It is ordered by this court, and the authority thereof, that every person having notice given, or otherwise left in writing at their house or place of usual abode, of any their cattle impounded or otherwise restrained, shall forthwith give satisfaction to the party wronged, or otherwise replevy their cattle and prosecute the same according to law, upon peril of suffering all the loss and damage that shall come to their cattle by standing in the pound or other lawful places of restraint, until such time as the party wronged shall recover his damage in a legal way. [May, 1657.]

CHAPTER XX.

ACTS RESPECTING CAUSES UNDER FORTY SHILLINGS.

One magistrate may end causes under forty shillings.

Sect. 1. For easing the charge and incumbrance of courts by small causes; it is ordered by this court and authority thereof; that any magistrate in the town where he dwells, may hear and determine by his discretion (not by jury) according to the laws here established, all causes arising in that county, wherein the debt, trespass or damage, doth not exceed forty shillings, who may send for parties and witnesses by summons or attachment directed to the marshal or constable, who shall faithfully execute the same.

Three commissioners in towns to end small causes.

And it is further ordered, that in such towns where no magistrate dwells, the court of assistants or county court, may from time to time, upon request of the said towns, signified under the hand of the constable, appoint three of the freemen as commissioners in such cases, any two whereof, shall have like power to hear and determine all such causes wherein either party is an inhabitant of that town, who have hereby power to send for parties and witnesses, by summons or attachment directed to the constable, as also to administer oaths to witnesses, and to give time to the defendant to answer if they see cause; and if the party summoned refuse to give in his bond or appearance; or sentenced, refuse to give satisfaction, where no goods appear in the same town where the party dwells, they may charge the constable with the party, to carry him before a magistrate or shire court (if then sitting) to be further proceeded with according to law, but the said commissioners may not commit to prison in any case. And

where the parties live in several towns, the defendant shall be liable to be sued in either town at the liberty of the plaintiff.

Sect. 2. And forasmuch as the magistrates are under an oath of God, for dispensing equal justice according to law:

It is ordered by the authority aforesaid, that all associates for county courts, when and where there shall be any, and all such commissioners authorized as aforesaid, shall be sworn before each county court or some magistrate in that county, unto the faithful discharge of the trust and power committed to them.

Associates and commissioners to be sworn.

And it is further ordered, that in all small causes as aforesaid, where only one magistrate dwells in the town, and the cause concerns himself, as also in such towns where no magistrate is, and the cause concerns any of the three commissioners, that in such cases the selectmen of the town, shall have power to hear and determine the same, and also to grant execution for the levying and gathering up such damages for the use of the person damnified, as one magistrate or three commissioners may do. And no debt or action proper to the cognizance of one magistrate or the three commissioners as aforesaid, shall be received into any county court, but by appeal from such magistrate or commissioners, except in cases of defamation and battery. [1647. 49.]

Selectmen to try causes.

County court to reject all actions under forty shillings.

Sect. 3. Whereas by reason of the concourse of people, and increase of trade in the town of Boston, suits at law are grown more frequent, whereby the county courts are much prolonged, and forasmuch as many crimes are also committed in the said town, by strangers and others, which often escape unpunished; for the prevention whereof,

It is ordered by this court and the authority thereof, that there be seven freemen resident in Boston, annually chosen by the freemen of the said town, and presented to the court of assistants, who hereby have power to authorize the said seven freemen to be commissioners of the said town, to act in things committed to their trust, as is hereafter expressed; who shall from time to time be sworn before the said court, or the governor, deputy governor or any two magistrates. And this court doth hereby give and grant commission and authority unto the said seven men, or any five of them, or any three of them with one magistrate, to hear and determine all civil actions which shall be brought before them, not exceeding the sum of ten pounds, arising within the neck of land on which the town is situate, as also on Noddles island, or betwixt any persons where both parties shall be inhabitants or residents within the said neck or Noddles island aforesaid, or where either party shall be an inhabitant or resident aforesaid; provided they keep a book of records for the entry of all causes, evidences, testimonies,

Commissioners of Boston.

Chosen.

Sworn.

Power in civil cases to ten pounds.

sentences and judgments as the law provides in like cases; which said commissioners are authorized annually, to appoint a clerk of their court and to demand and receive of every plaintiff in all cases or actions not exceeding forty shillings, the sum of three shillings four pence; and for all other actions, the sum of ten shillings; and for all other things the accustomed fees; and the said commissioners shall from time to time publish their court days, as the three commissioners in towns are bound to. [1651.]

And for the discovery, prevention and punishment of misdemeanours in the town of Boston:

In criminal cases.

Power and authority is hereby given and granted to the said commissioners, and every of them, by warrant under their or his hand, to convent before them, or any of them, all such persons as shall be complained of for such offences, or otherwise brought to their cognizance, and to hear and determine the same, according to the laws here established as any magistrate may do, provided the fines imposed by them, do not exceed forty shillings for one offence.

And that the said commissioners may the better and more diligently endeavour the suppressing of sin and misdemeanours, and the breach of the peace in the said town; their commission shall be from time to time, under the hand of the secretary of the general court. And also all marshals, constables and other inhabitants respectively, are required to be aiding and assisting our commissioners aforesaid in this behalf.

Officers required to assist the commissioners.

And that no person may be discouraged or damnified by this commission; it shall be lawful for any person to appeal from the sentence of all or any of them to the court of assistants. [1651.]

Sect. 4. And because the commissioners in the several towns have power of judicature, the exercise whereof is of great concernment, both to towns and country:

None to be commissioner but such as are approved.

It is therefore ordered, that henceforth there shall be none admitted to be a commissioner for any town in this jurisdiction, but such whose conversation is inoffensive, and whose fidelity to the country is sufficiently known and approved of by the county court of that shire. [October, 1654.]

CHAPTER XXI.

ACTS RESPECTING CHARGES, PUBLICK RATES, &c.

None to be employed in publick service at their own charge.

Sect. 1. It is ordered by this court and the authority thereof, that no governor, deputy governor, assistant, associate, grand or petty jury man at any court, nor any deputy for the general court, nor any commissioners for military discipline at the time of their publick meetings, shall at any time bear his own charges, but their necessary expenses shall be defrayed, either by the town, or the shire on whose service they are, or by the country in general. [1631. 41.]

Sect. 2. The court considering the necessity of an equal contribution to all common charges in towns:

Every inhabitant to pay to all charges in church and commonwealth.

Doth order, that every inhabitant shall contribute to all charges both in church and commonwealth, whereof he doth or may receive benefit: and every such inhabitant who shall not contribute porportionably to his ability to all common charges, both civil and ecclesiastical, shall be compelled thereunto, by assessment and distress, to be levied by the constable or other officer of the town; and the lands and estates of all men (wherein they dwell) shall be rated for all town charges, both civil and ecclesiastical (as aforesaid) where the lands and estates shall lie, and their persons where they dwell.

Lands and estates to pay where they lie.

Sect. 3. For a more equal and ready way of raising means for defraying the publick charges, and for preventing such inconveniences as have fallen out upon former assessments:

Country rate.

It is ordered and enacted by the authority of this court; that the treasurer for the time being, shall from year to year in the fifth month, without expecting any other order, send his warrants to the constable and selectmen of every town within this jurisdiction, requiring the constable to call together the inhabitants of the town, who being so assembled, shall choose some one of their freemen to be a commissioner for the town, who together with the selectmen, for their prudential affairs, shall some time in the sixth month then next ensuing, make a list of all the male persons in the same town from sixteen years old and upwards, and a true estimation of all personal and real estates, being or reputed to be the estate of all and every the persons in the same town, or otherwise under their custody or managing according to just valuation, and to what persons the same do belong, whether in their own town or elsewhere, so near as they can by all lawful means which they may use, viz. of houses, lands of all sorts, as well broken up as other (except such as doth

Treasurer's warrant to the constable.

Persons and estates to be valued in the sixth month.

or shall lie common for free feed of cattle, to the use of the inhabitants in general, whether belonging to towns or particular persons, but not to be kept or herded upon to the damage of the proprietors,) mills, ships and all small vessels merchantable, goods, cranes, wharves, and all sorts of cattle, and all other known estate whatsoever, either at sea or on shore; all which persons and estates are by the said commissioners and selectmen to be assessed and rated as here followeth, viz. every person aforesaid (except magistrates and elders of churches) one shilling and eight pence by the head, and all estates, both real and personal, at one penny for every twenty shillings, according to the rates of cattle hereafter mentioned. The estates of all merchants, shopkeepers and factors, shall be assessed by the rule of common estimation, according to the will and doom of the assessors, having regard to their stock and estate, be it presented to view or not, in whose hands soever it be; and if any such merchants find themselves over valued, if they can make it appear to the assessors, they are to be eased by them, if not, by the next county court; and houses and land, of all sorts (except as aforesaid) shall be rated at an equal and indifferent value, according to their worth in the towns and places where they lie. Also every bull and cow of four years old and upward at three pounds, heifers and steers between three and four years old at fifty shillings, and between two and three years old at forty shillings, and between one and two at twenty shillings, and every ox of four years old and upward at five pounds, every horse and mare of three years old and upward five pounds, between two and three at three pounds, of one year old and upwards at thirty shillings; every ewe sheep above one year old at ten shillings, every goat above a year old at eight shillings, every wether sheep above one year old at ten shillings; every swine above one year old at twenty shillings; every ass above one year old at forty shillings: and all cattle of all sorts under a year old, are hereby exempted; as also all hay and corn in the husbandman's hand, because all meadow, arable ground and cattle are rateable as aforesaid. [1651. 57.]

Persons at 1s. 8d. per head.

Estates at one penny per pound.

Merchants rated by will and doom.

Rate of house and lands.

Rate of cattle.

And for all such persons as by the advantage of their arts and trades, are more enabled to help bear the publick charge than common labourers and workmen, as butchers, bakers, brewers, victualers, smiths, carpenters, taylors, shoemakers, joiners, barbers, millers, and masons, with all other manual persons and artists, such are to be rated for returns and gains, proportionable unto other men for the produce of their estates, provided that in the rate by the poll, such persons as are disabled by sickness, lameness or other infirmity shall be exempted. And for such servants and children as

Artificers and handicrafts rated.

Impotent persons exempted.

take not wages, their parents and masters shall pay for them, but such as take wages shall pay for themselves.

And it is further ordered, that the commissioners for the several towns, in every shire, shall yearly upon the first fourth day of the week in the seventh month, assemble at their shire town, and bring with them fairly written the just number of males listed as aforesaid, and the assessments of estates made in their several towns, according to the rules and directions in this present order expressed, and the said commissioners being so assembled, shall duly and carefully examine all the said lists and assessments of the several towns in that shire, and shall correct and perfect the same, according to the true intent of this order, as they or the major part of them shall determine, and the same so perfected, they shall speedily transmit to the treasurer under their hands, or the hands of the major part of them; and thereupon the treasurer shall give warrants to the constables to collect and levy the same; so as the whole assessment, both for persons and estates, may be paid in unto the treasurer before the twentieth day of the ninth month yearly: and every one shall pay their rate to the constable in the same town where it shall be assessed, (nor shall any land or estate be rated in any other town but where the same shall lie, or was improved to the owners, reputed owners, or other proprietors use or behoof, if it be within this jurisdiction.) And if the treasurer cannot dispose of it there, the constable shall send it to such place in Boston, or elsewhere, as the treasurer shall appoint, at the charge of the country, to be allowed the constable upon his account with the treasurer, and for all peculiars, viz. such places as are not yet laid within the bounds of any town, the same lands with the persons and estates thereupon, shall be assessed by the rates of the town next unto it, the measure or estimation shall be by the distance of the meeting houses.

Commissioners meet at the shire town.

To perfect the assessments.

Constables to collect in the ninth month.

Peculiars to be assessed at the next town.

And if any of the said commissioners, or of the selectmen, shall wittingly fail or neglect to perform the trust committed to them by this order, in not making, correcting, perfecting or transmitting any of the said lists or assessments according to the intent of this order:

Commissioners or selectmen failing.

Every such offender shall be fined forty shillings for every such offence, or so much as the country shall be damnified thereby, so it exceed not forty shillings for one offence, provided such offence be complained of and prosecuted within six months.

Forfeit 40s.

And it is further ordered, that upon all distresses to be taken for any of the rates and assessments aforesaid, the officer shall distrain goods or cattle if they may be had, and if no goods, then lands or houses; if neither goods nor lands can be had within the town where such distress is to be taken, then to attach the body of such persons to be carried

to prison, there to be kept till the next court of that shire, except they put in security for their appearance there, or that payment be made in the mean time.

And it is ordered, that the prices of all sorts of corn, to be received upon any rate by virtue of this order, shall be such as this court shall set from year to year, and in want thereof at price current, to be judged by the commissioners of Essex, Middlesex, and Suffolk.

Land in England rate free.

And it is further ordered, that no estate of land in England, shall be rated in any publick assessment; and it is hereby declared, that by publick assessment and rates, is intended only such as are assessed by order of the general court for the country's occasion and no other. [1646. 47, 51, 57.]

Constables to clear their accounts with the treasurer by the first of May.

Sect. 4. It is ordered, that every constable within this jurisdiction, shall on the penalty of five pounds clear up all their accounts with the treasurer, for the rates of their several towns, by the first of May, yearly, and they and every of them are empowered to press boats or carts, for the better and more speedy sending in their rates, according to the time appointed.

Constable after the expiration of his office hath power to collect rates.

And if any constable shall not have collected the rates and assessments, committed to his charge by the treasurer, during the time of his office, that he shall, notwithstanding the expiration of his office, have power to levy by distress, all such rates and levies; and if he bring them not in to the treasurer according to his warrant, the treasurer shall distrain such constable's goods for the same.

Treasurer may distrain the constable or any other inhabitant.

And if the treasurer shall not so distrain the constable, he shall be answerable to the country for the same: and if the constable be not able to make payment, it shall be lawful for the treasurer to distrain for all arrearages of rates and levies, any man or men of that town where the constables are unable, and that man or men upon petition to the general court, shall have order to collect the same again equally of the town, with his just damages for the same. [1640. 56.]

Sect. 5. This court understanding that several gentlemen merchants strangers, in the beginning of every year, frequently coming into these parts, and bringing great store of English and other goods of all sorts to great value; and usually making up their markets to their great advantage before the sixth month, when the rates, or order for the collecting of them by law is to issue out, (not without a considerable disadvantage to the merchants and shop-keepers, residents and inhabitants of this colony, who have borne the heat of the day, and are fain to be at all the charge for supporting of the government) and the said merchants strangers taking the chief of the benefit of the trade, and make their escapes without any payment to support the government of this place, under, and by which they reap so

great advantage to themselves: it is therefore ordered, that it shall be henceforth lawful for the selectmen of each town, where such strangers are, or shall be, to assess all such strangers, according to the cargoes they shall bring into this country: or in case of their refusal, to give a true account of their estate to the selectmen; then the said selectmen shall, and hereby are empowered to make their assessment on all such strangers in any month of the year, yearly, in proportion to a single rate by will and doom, as the inhabitants of this country are used to be rated; and for non-payment, by the constables to levy their said assessments, as in other cases, by warrant from the said selectmen. [May, 1665.]

Order for assessments on strangers.

Sect. 6. For the preventing of differences arising between the treasurer of the country and the constables of the towns, in collecting and receiving the country rate, and of great damage thereby happening to the country:

For prevention of difference between treasurer and constables.

It is ordered by this court, that where any pay is tendered, the price whereof is not determined by this court, the place of appraisement shall be where the payment is tendered to the treasurer, or his order by men indifferently chosen, as the law directs. [1667.]

Sect. 7. It is ordered by this court and the authority thereof, that henceforth the ministers of God's word, regularly ordained over any church of Christ, orderly gathered and constituted; shall be freed from all rates for the country, county and church, and for the town also, except where by special contract with the town they have consented thereunto: provided this freedom shall extend only to such estate as is their own proper estates, and under their own custody and improvement. [May, 1671.]

Ministers of God's word rate free.

CHAPTER XXII.

ACTS RESPECTING CHILDREN AND YOUTH.

Sect. 1. Forasmuch as the good education of children is of singular behoof and benefit to any commonwealth, and whereas many parents and masters are too indulgent and negligent of their duty in that kind:

It is ordered, that the selectmen of every town, in the several precincts and quarters where they dwell, shall have a vigilant eye over their brethren and neighbours, to see, first that none of them shall suffer so much barbarism in

Selectmen's care that all children may be taught to read.

any of their families, as not to endeavour to teach, by themselves or others, their children and apprentices, so much learning, as may enable them perfectly to read the English tongue, and knowledge of the capital laws: upon penalty of twenty shillings for each neglect therein.

And catechised.

Also that all masters of families do once a week (at the least) catechise their children and servants in the grounds and principles of religion; and if any be unable to do so much, that then at the least they procure such children and apprentices to learn some short orthodox catechism without book, that they may be able to answer unto the questions that shall be propounded to them out of such catechism, by their parents or masters, or any of the selectmen when they shall call them to a trial, of what they have learned in that kind.

Children to be brought up in some calling.

And farther that all parents and masters do breed and bring up their children and apprentices in some honest lawful calling, labour or employment, either in husbandry or some other trade, profitable for themselves and the commonwealth, if they will not or cannot train them up in learning, to fit them for higher employments.

Unruly children placed out by selectmen.

And if any of the selectmen, after admonition by them given to such masters of families, shall find them still negligent of their duty in the particulars aforementioned, whereby children and servants become rude, stubborn, and unruly: the said selectmen with the help of two magistrates, or the next county court for that shire, shall take such children or apprentices from them, and place them with some masters for years, (boys till they come to twenty-one, and girls eighteen years of age complete) which will more strictly look unto, and force them to submit unto government, according to the rules of this order, if by fair means and former instructions they will not be drawn unto it. [May, 1642.]

Sect. 2. Forasmuch as it appeareth by too much experience, that divers children and servants do behave themselves disobediently and disorderly towards their parents, masters and governors, to the disturbance of families, and discouragement of such parents and governors:

Disobedient children and servants punished by one magistrate.

It is ordered by this court and the authority thereof, that it shall be in the power of any one magistrate, by warrant directed to the constable of that town where such offender dwells, upon complaint, to call before him any such offender, and upon conviction of such misdemeanors, to sentence him to endure such corporal punishment, by whipping or otherwise, as in his judgment the merit of the fact shall deserve, not exceeding ten stripes for one offence, or bind the offender to make his appearance at the next county court:

And further it is also ordered, that the commissioners of Boston, and the three commissioners of each town where no magistrate dwells, shall have the like power; provided that the person or persons so sentenced, shall have liberty to make their appeal to the next county court, in any such cases. [1654.]

Or by the commissioners.

Sect. 3. Upon information of divers loose, vain and corrupt persons, both such as come from foreign parts, as also some others here inhabiting or residing, which insinuate themselves into the fellowship of the young people of this country, drawing them both by night and by day, from their callings, studies and honest occupations, and lodging places, to the dishonour of God, and grief of their parents, masters, tutors, guardians and overseers &c.

It is ordered by this court and the authority thereof, that whosoever shall any ways cause or suffer any young people or persons whatsoever, whether children, servants, apprentices, scholars belonging to the college, or any Latin school, to spend any of their time or estate, by night or by day, in his or their company, ship or other vessel, shop or house, whether ordinary, tavern, victualling house, cellar or other place where they have to do, and shall not from time to time, discharge and hasten all such youths to their several employments and places of abode, or lodging aforesaid, if their being in any such place be known to them, or any other servant or help in the family, or supplying the place of a servant at sea or on land: that then such person, householder, shop-keeper, ship-master, ordinary-keeper, taverner, victualler, or other, shall forfeit the sum of forty shillings upon legal conviction before any magistrate, or the commissioners authorized to end small causes, one half to the informer, the other half to the country; and all constables in their several limits are required to act herein as is provided in reference to the law concerning innkeepers. [1651.]

Persons under government not to be entertained in common houses.

On penalty of forty shillings.

Sect. 4. Whereas sundry gentlemen of quality, and others, oft times send over their children into this country to some friends here, hoping (at least) thereby to prevent their extravagant and riotous courses; who notwithstanding (by means of some unadvised or ill affected persons, which give them credit, in expectation their friends either in favour to them, or prevention of blemish to themselves, will discharge their debts) they are no less lavish and profuse here, to the great grief of their friends, dishonour of God, reproach of the country:

It is therefore ordered by this court, that if any person, after publication hereof, shall any way give credit to any such youth, or other person under one and twenty years of age, without order from their friends here or elsewhere under their hands in writing, they shall lose their

Debts made by persons under age not recoverable.

debt whatever it be; and further, if such youth or person incur any penalty by such means, and have not wherewith to pay, such person or persons as are occasions thereof, shall pay it, as the delinquents in the like case should do. [1647.]

Parents denying marriage, &c.

SECT. 5. If any person shall wilfully and unreasonably deny any child, timely or convenient marriage, or shall exercise any unnatural severity toward them; such children shall have liberty to complain to authority for redress in such cases. [1641.]

Orphans not be disposed of without a court.

SECT. 6. No orphan, during their minority, which was not committed to tuition or service by their parents in their life time, shall afterwards be absolutely disposed of by any, without the consent of some court, wherein two assistants (at least) shall be present, except in case of marriage, in which the approbation of the major part of the selectmen of that town, or any one of the next assistants shall be sufficient, and the minority of women in case of marriage, shall be sixteen years. [1646.]

CHAPTER XXIII.

AN ACT RESPECTING CHIRURGIONS, MIDWIVES AND PHYSICIANS.

FORASMUCH as the law of God allows no man to impair the life, or limbs of any person, but in a judicial way:

No force or violence to be used in any case without consent, &c.

It is therefore ordered, that no person or persons whatsoever, employed at any time about the bodies of men, women or children, for preservation of life or health; as chirurgions, midwives, physicians, or others, presume to exercise, or put forth any act contrary to the known approved rules of art, in each mystery and occupation, nor exercise any force, violence or cruelty upon, or towards the body of any, whether young or old, (no not in the most difficult and desperate cases) without the advice and consent of such as are skilful in the same art, (if such may be had) or at least of some of the wisest and gravest then present, and consent of the patient or patients if they be mentis compotes, much less contrary to such advice and consent; upon such severe punishment as the nature of the fact may deserve, which law nevertheless, is not intended to discourage any from all lawful use of their skill, but rather to encourage and direct them in the right use thereof, and inhibit and restrain the presumptuous arrogancy of such as through confidence of their own skill, or any other sinister respects, dare boldly

attempt to exercise any violence upon or towards the bodies of young or old, one or other, to the prejudice or hazard of the life or limb of man, woman, or child. [1649.]

CHAPTER XXIV.

ACTS RESPECTING THE CLERKS OF THE WRITS.

SECT. 1. IT is ordered by this court and authority thereof, that (notwithstanding every magistrate hath power to grant warrants, summons and attachments) in every town within this jurisdiction, there shall henceforth be a clerk of the writs, nominated by each town, and allowed by each shire court, to grant summons and attachments in all civil actions, at the liberty of the plaintiff, and summons for witnesses; and the said clerks are allowed to grant replevins, and to take bond with sufficient security of the party to prosecute the suit, whose fees shall be, for every warrant two pence, a replevin or attachment three pence, and for a bond four pence. And all attachments are to be directed to the constables, in such towns where there is no marshal dwelling. [1641.]

Clerks' fees.

Warrants directed to the constable.

SECT. 2. It is ordered, that henceforth the clerk of the writs shall demand of such as receive attachments of them, three pence a piece more than formerly, in behalf of the marshal general, which shall be in lieu of that three pence on attachments, by a former law he was to receive of the constable or county marshal, and that the constables shall have but twelve pence upon an attachment as formerly. [1660.]

Clerk of the writs to respond the marshal's fees of three pence attachment.

CHAPTER XXV.

ACTS RESPECTING THE COLLEGE.

SECT. 1. WHEREAS through the good hand of God upon us, there is a college founded in Cambridge in the county of Middlesex, called Harvard College, for the encouragement whereof, this court hath given the sum of four hundred

pounds, and also the revenue of the ferry betwixt Charlestown and Boston; and that the well ordering and managing of the said college is of great concernment:

Commissioners and feoffees of the college.

It is therefore ordered by this court and the authority thereof, that the governor and deputy governor for the time being, and all the magistrates of this jurisdiction, together with the teaching elders of the six next adjoining towns, viz. Cambridge, Watertown, Charlestown, Boston, Roxbury and Dorchester, and the president of the said college for the time being, shall from time to time have full power and

To make orders.

authority to make and establish all such orders, statutes and constitutions, as they shall see necessary for the instituting, guiding and furthering of the said college, and several members thereof, from time to time, in piety, mo-

Dispose of gifts and revenues.

rality and learning, and also to dispose, order and manage to the use and behoof of the said college and members thereof, all gifts, legacies, bequeaths, revenues, lands and donations, as either have been, are, or shall be conferred, bestowed, or any way shall fall, or come to the said college. And whereas it may come to pass, that many of the said magistrates and said elders may be absent, or otherwise employed about other weighty affairs, when the said college may need their present help and counsel; it is therefore ordered, that the greater number of magistrates and elders, which shall be present with the president, shall have the power of the whole; provided that if any constitution, order or orders by them made, shall be found hurtful unto the said college, or the members thereof, or to the weal publick, then upon appeal of the party or parties grieved, unto the company of overseers first mentioned, they shall repeal the said order or orders (if they shall see cause) at their next meeting, or stand accountable thereof to the next general court. [1636. 40. 42.]

Sect. 2. Whereas through the good hand of God, many well devoted persons have been, and daily are moved and stirred up to give and bestow sundry gifts, legacies, lands and revenues, for the advancement of all good literature, arts and sciences in Harvard college in Cambridge in the county of Middlesex, and to the maintenance of the president and fellows, and for all accommodations of buildings, and all other necessary provisions that may conduce to the education of the English and Indian youth of this country, in knowledge and godliness:

The college corporation.

It is therefore ordered and enacted by this court and the authority thereof, that for the furthering of so good a work, and for the purpose aforesaid, from henceforth, that the said college in Cambridge in Middlesex in New England, shall be a corporation consisting of seven persons, viz. a president, five fellows, and a treasurer or bursar; and that Henry Dunster shall be the first president, Samuel Mather,

Samuel Danford, masters of arts; Jonathan Mitchell, Comfort Starr, and Samuel Eaton, shall be the five fellows, and Thomas Danford to be present treasurer, all of them being inhabitants in the Bay, and shall be the first seven persons of which the said corporation shall consist; and that the said seven persons, or the greater number of them procuring the presence of the overseers of the college, and by their counsel and consent shall have power, and are hereby authorized at any time or times, to elect a new president, fellows or treasurer so oft, and from time to time as any of the said persons shall die or be removed, which said president and fellows for the time being, shall for ever hereafter in name and fact be one body politick and corporate in law to all intents and purposes, and shall have perpetual succession, and shall be called by the name of the President and Fellows of Harvard College, and shall from time to time be eligible as aforesaid, and by that name they and their successors shall and may purchase and acquire to themselves, or take and receive upon free gift and donation, any lands, tenements or hereditaments within this jurisdiction of the Massachusetts, not exceeding five hundred pounds per annum, and any goods and sums of money whatsoever to the use and behoof of the said president, fellows and scholars of the said college; and also may sue and plead, or be sued and impleaded by the name aforesaid in all courts and places of judicature, within the jurisdiction aforesaid; and that the said president, with any three of the fellows, shall have power and are hereby authorized, when they shall think fit, to make and appoint a common seal for the use of the said corporation; and the president and fellows, or major part of them from time to time, may meet and choose such officers and servants for the college, and make such allowance to them, and them also to remove, and after death or removal, to choose such others, and to make from time to time such orders and by-laws for the better ordering and carrying on the work of the college as they shall think fit; provided the said order be allowed by the overseers: and also, that the president and fellows, or major part of them with the treasurer, shall have power to make conclusive bargains for lands and tenements to be purchased by the said corporation for valuable consideration. And for the better ordering of the government of the said college and corporation, be it enacted by the authority aforesaid, that the president and three more of the fellows, shall and may from time to time, upon due warning or notice given by the president to the rest, hold a meeting for the debating and concluding of affairs concerning the profits and revenues of any lands, and disposing of their goods (provided that all the said disposings be according to the will of the donors,) and for direction in all emergent occasions, execution of all orders and by-laws, and for the procuring of a general meeting of the overseers

and society, in great and difficult cases; and in case of non-agreement in all such cases aforesaid, the conclusion shall be made by the major part, the president having a casting vote, the overseers consenting thereunto, and that all the aforesaid transactions shall tend to, and for, the use and behoof of the president, fellows, scholars and officers of the said college, and for all accommodations of buildings, books, and all other necessary provisions and furnitures as may be for the advancement and education of youth, in all manner of good literature, arts and sciences: and further it is ordered by this court, and the authority thereof, that all the lands, tenements and hereditaments, houses or revenues within this jurisdiction, to the aforesaid president or college appertaining, not exceeding the value of five hundred pounds per annum, shall be from henceforth freed from all civil impositions, taxes and rates; all goods to the said corporation, or to any scholar thereof appertaining, shall be exempt from all manner of toll, customs, excises whatsoever; and that the president, fellows and scholars, together with the servants and other necessary officers to the said president or college appertaining, not exceeding ten, viz. three to the president and seven to the college belonging, shall be exempted from all personal civil offices, military exercise or service, watchings and wardings, and such of their estates not exceeding one hundred pounds a man, shall be freed from all country taxes and rates whatsoever, and no other. [May, 1650.]

Sect. 3. Whereas we cannot but acknowledge the great goodness of God towards his people in this wilderness, in raising up schools of learning, and especially the college, from whence there hath sprung many instruments, both in church and commonwealth, both to this and other places: and whereas at present the work of the college hath been several ways obstructed, and seems yet also at present, for want of comfortable maintenance, for the encouragement of a president: this court taking the same into their serious consideration, and finding that though many propositions have been made for a voluntary contribution, yet nothing hath hitherto been obtained from several persons and towns, although some have done very liberally and freely, and fearing least we should shew ourselves ungrateful to God, or unfaithful to posterity, if so good a seminary of knowledge and virtue should fall to the ground through any neglect of ours:

One hundred pounds given by the court to the president and fellows.

It is therefore ordered by this court and the authority thereof, that (besides the profit of the ferry formerly granted to the college, which shall be continued) there shall be yearly levied by addition to the country rate one hundred pounds, to be paid by the treasurer of the country to the college treasurer, for the behoof and maintenance of the

president and fellows, to be distributed between the president and fellows according to the determination of the overseers of the college, and this to continue during the pleasure of the country. [1654.]

And it is hereby ordered, that no man shall stand engaged to pay his voluntary contribution, that he hath underwritten by virtue of this court's propositions; and that such persons as have already done voluntarily, shall be considered for the same in the country rate, such a proportion as this addition of one hundred pounds doth add to the rate, to be allowed by the constable to each person, and by the treasurer to the constable. [1659.]

CHAPTER XXVI.

ACTS RESPECTING CONDEMNED PERSONS.

None to be executed within four days after condemnation.

SECT. 1. IT is ordered by this court; that no man condemned to die, shall be put to death within four days next after his condemnation, unless the court see special cause to the contrary, or in case of martial law: nor shall the body of any man so put to death, be unburied twelve hours, unless it be in case of anatomy. [1641.]

Signing of warrants for execution.

SECT. 2. It is ordered by this court and the authority thereof, that the secretary for the time being, shall from time to time, sign all warrants for the execution of persons sentenced to death, either in the general court or court of assistants: and that the secretary or clerk of every court shall sign warrants for executions in all other judgments of courts civil or criminal; any custom or usage to the contrary notwithstanding. [1668.]

CHAPTER XXVII.

ACTS RESPECTING THE POWERS AND DUTIES OF CONSTABLES.

The office of a constable, collected out of the several laws of this colony.

Sect. 1. To whip and punish any that are to be punished by order of authority where there is no other appointed in that town wherein he dwells, or to procure it to be done.

Sect. 2. To send and convey persons from constable to constable although they come from foreign parts, until they be brought to the place they are sent, or before some magistrate.

Sect. 3. To speed away all hues and cries to effect, and to sign them where no magistrate is near at hand against thieves, robbers, murderers, manslayers, peace-breakers and other capital offenders, on penalty of forty shillings for neglect in capital crimes.

Sect. 4. To apprehend without warrant such as be overtaken with drink, swearing, sabbath-breaking, lying vagrant persons, night-walkers being taken in the manner by himself or present information, and to keep them in close custody until they can carry them before a magistrate.

Sect. 5. To search for all such persons in any suspected or disordered place, and in houses licensed to sell beer and wine, on penalty of ten shillings for every neglect, being informed or required thereto.

Sect. 6. Not to apprehend any person by order of any magistrate without warrant in writing.

Sect. 7. To warn any person to assist him, and none to refuse on penalty of ten shillings; and if it appear to be obstinately and contemptuously done, then to pay forty shillings.

Sect. 8. To carry his black staff in the execution of his office that none may plead ignorance.

Sect. 9. To take notice of common coasters, unprofitable fowlers, and other idle persons and tobacco takers, and to present them to the next assistants, and of such as shall harbour any young people, children, servants, apprentices, students or scholars, and not hasten them to their respective employments, and to act therein as is provided in reference to the law of innkeepers.

Sect. 10. To aid the custom masters of wines &c. in helping them to break open any place, cellar &c. where the owners shall refuse to deliver their keys peaceably.

Sect. 11. To levy all fines imposed by a magistrate or commissioner, and all rates and fines for the country and

county by order from the respective treasurers, and that speedily on penalty of being distrained by the treasurer, and for that end are empowered to levy the same although out of their office.

Sect. 12. To gather all town rates committed to them by the selectmen of the place where they dwell.

Sect. 13. To clear accounts with the country treasurer annually by the first of May, on penalty of five pounds forfeiture.

Sect. 14. Upon information given by the finder, to enter all lost goods or strays under twenty shillings value in a book, and cry the same at three general town meetings or lectures; and if above twenty shillings value at the next market, or two next towns' publick meetings where no market is, within ten miles, upon penalty of forfeiting one third part of the value thereof.

Sect. 15. To present the names of such persons as shall refuse to watch and ward, or to hire a sufficient person in their room to the next magistrate, and to begin the constable's watch annually May first, and not give over until the last of September, on penalty of five pounds, and to see that the major part of the watch be sufficient able men, and not youth, and to observe the direction of the selectmen therein, and to give watchmen their charge according to the law expressing the same.

Sect. 16. To secure by commitment or otherwise any inhabitant or stranger after ten of the clock at night behaving themselves deboist, or that giveth not a reasonable ground to the constable or watchmen, or that shall be in drink, until the law be satisfied. And the constable is to carry them before a magistrate next morning.

Sect. 17. To provide and buy at the town's charge all weights and measures required by law per town standards; and upon warrant from the town sealer to warn all the inhabitants to bring in their weights and measures to be tried and sealed, and to make return in writing the names of all persons so summoned, on penalty of forty shillings.

Sect. 18. To serve all attachments directed to them in any civil case, and make return thereof to the court in season.

Sect. 19. To warn the freemen of their town in the second week of March annually to meet together to give in their votes for nomination of magistrates, and choice of county treasurers, and to acquaint the freemen of the return of the names of such as be nominated.

Sect. 20. To make return under their hands of the names of the deputies, and for what time chosen, on penalty of twenty shillings.

Sect. 21. To pay the marshal general three pence out of every attachment by them served. To execute all warrants from the recorder of any court for choice of jurymen, and

to warn the persons chosen to make return of their process to the recorder.

Sect. 22. In case of untimely or unnatural death of any person, to summon a jury of twelve discreet men to inquire of the cause and manner of their death, who shall give in a true verdict thereof to the next assistant, or court of that shire on oath.

Sect. 23. To give warning to any the inhabitants of their town, whether men or women that live from their husbands or wives, to appear at the next court of that county, to answer for their so doing, on penalty of twenty shillings for neglect.

Sect. 24. Not to refuse the office of a constable (being orderly chosen thereto) on penalty of five pounds; and if in Boston ten pounds penalty.

Sect. 25. In case of any servants running from their masters, or inhabitant going privately away with suspicion of ill intention (in the absence of a magistrate) the constable, and two of the chief inhabitants are to press men, boats, and pinnaces at the publick charge to pursue such persons by sea or land, and bring them back by force of arms.

Sect. 26. To inform the court of all new comers that settle themselves without license according to law.

It is ordered by this court, and the authority thereof, that the office and power of a constable expressed in these twenty-six articles, be forthwith printed, that so each constable may understand his duty. [May, 1658.]

Charge of hues and cries.

Sect. 27. For the regulating and settling the charge of prosecution of hues and cries, it is ordered, that what shall arise by occasion of escape from the country's prison, or flight from authority to avoid the same, shall be paid by the treasurer of the country, and such as arise by flying from any of our county prisons, or to escape any of them, shall be defrayed by the treasurer of that county where the occasion did arise. And such persons as procure hues and cries upon their own particular occasions, shall bear all the charge arising therefrom; provided due accounts be made by such as demand pay. [1660.]

Constables to serve selectmen's warrants.

Sect. 28. Whereas in the law, title townships, the several towns and selectmen of the said towns have power to impose penalties as the law directs, and whereas many constables question whether it be their duty to serve warrants from the selectmen for persons to appear before them and to levy fines; for the removal of such doubts and as an addition to the said law, this court doth order and require that all constables respectively, shall serve all warrants from the selectmen and levy all such fines as shall be imposed by the said towns or selectmen. [May, 1671.]

CHAPTER XXVIII.

ACTS AS TO CONVEYANCES, DEEDS AND WRITINGS.

SECT. 1. FOR the prevention of clandestine and uncertain sales and titles:

It is ordered and declared by this court, that henceforth no sale or alienation of houses and lands, within this jurisdiction, shall be holden good in law, except the same be done by deed in writing, under hand and seal, and delivered, and possession given upon part in the name of the whole, by the seller or his attorney, so authorized under hand and seal; unless the said deed be acknowledged and recorded according to law. [May, 1652.]

No sale of land valid without deed &c.

SECT. 2. Whereas by the unskilfulness of some, that make deeds and conveyances of houses and land, the word heir is oftentimes omitted, when as an estate of inheritance is intended to be passed by the parties; whereupon questions and suits at law are apt to arise: for the prevention whereof for time to come, this court ordereth:

That all deeds and conveyances of houses and lands in this jurisdiction, wherein an estate of inheritance is to be passed, it shall be expressed in these words, or to the like effect; viz. To have and to hold, the said house or lands respectively, to the party or grantee, his heirs and assigns for ever; or if it be an estate entailed, then to have and to hold &c to the party or grantee, and to the heirs of his body lawfully begotten, or to the heirs male of his body lawfully begotten, between him and such an one his wife, or to have and to hold to the grantee for term of life, or for so many years; provided this law shall not include former deeds and conveyances, but leave them in the same condition, as they were or shall be in before this law takes effect, which shall be at the last of October one thousand six hundred and fifty one, provided also that this law shall not extend to houses or lands given by will or testament, or to any land granted, or to be granted by the inhabitants of a town. [May, 1651.]

How deeds and conveyances are to be made.

SECT. 3. It is ordered, that no conveyance, deed or promise whatsoever, shall be of validity, if it be obtained by illegal violence, imprisonment, threatening, or any kind of forcible compulsion, called duresse. [1641.]

Deeds obtained by force invalid.

And all covenous or fraudulent alienations or conveyances of lands, tenements, or any hereditaments, shall be of no force or validity to defeat any man from his due debts or

Fraudulent deeds invalid.

legacies, or from any just title, claim or possession, of that which is so fraudulently conveyed.

SECT. 4. And for the avoiding all fraudulent conveyances, and that every man may know what estate or interest, other men may have in any houses, lands, or other hereditament, they are to deal in:

Sales to be acknowledged and recorded.

It is ordered by the authority of this court, that after the end of October, one thousand six hundred and forty, no mortgage, bargain, sale, or grant made, of any houses, lands, rents, or other hereditaments, where the grantor remains in possession, shall be of any force against other persons, except the grantor and his heirs, unless the same be acknowledged before some magistrate, and recorded, as is hereafter expressed: and that no such bargain, sale, or grant already made in way of mortgage, where the grantor remains in possession, shall be of force against other, but the grantor or his heirs, except the same shall be entered as is hereafter expressed within one month after the date before mentioned, if the party be within this jurisdiction, or elsewhere, within three months after he shall return; and

Party refusing to acknowledge his deed to be imprisoned.

if any such grantor, being required by the grantee, his heirs or assigns, to make an acknowledgment of any grants, sale, bargain, or mortgage by him made, shall refuse so to do, it shall be in the power of any magistrate to send for the party so refusing, and commit him to prison without bail or mainprise, until he shall acknowledge the same, and the grantee

Grantee to enter his caution.

is to enter his caution with the recorder of the county court, and this shall save his interest in the mean time; and if it be doubtful whether it be the deed and grant of the party, he shall be bound with sureties to the next court of assistants, and the caution shall remain good as aforesaid. [October, 1640.]

SECT. 5. And for the recording of all such grants, sales, mortgages:

Clerk of the court to enter deeds.

It is ordered, that the clerk of every shire court shall enter all such grants, sales, bargains, mortgages of houses, lands, rents, and hereditaments as aforesaid, together with the names of the grantor and grantee, thing and estate granted, together with the date thereof. [1641, 42.]

CHAPTER XXIX.

AN ACT RESPECTING THE COUNCIL.

THIS court considering how the weighty affairs of this jurisdiction, whether they concern this peculiarly, or have reference to the rest of our confederated colonies, may be duly and speedily transacted, in the vacancy of the general court, for the satisfaction of the commissioners, in respect of the weighty and sudden occasions which may be then in hand:

SECT. 1. Doth hereby express and declare, that the general court ought to be called by the governor, when the importancy of the business doth require it, and that time and opportunity will safely admit the same; and that all other necessary matters are to be ordered and despatched by the major part of the council of the commonwealth: and therefore to that end, letters signifying briefly the business, and the time and place of meeting for consultation ought to be sent unto the assistants. Council how to be called together.

SECT. 2. Also it is hereby declared, that seven of the said assistants meeting, the governor or deputy governor being one, is a sufficient assembly to act, by impressing of soldiers, or otherwise as need shall be, and in case of extreme and urgent necessity, when endeavours are reasonably used to call together the assistants, and the business will not admit delay, then the acts of so many as do assemble, are to be accounted and are accounted valid and sufficient: Also it is intended, that the general words aforementioned, contain in them power to impress and send forth soldiers, and all manner of victuals, vessels at sea, carriages and all other necessaries, and to send warrants to the treasurer to pay for the same. [1645.] How many may act. Their power.

CHAPTER XXX.

AN ACT RESPECTING COUNSEL AND ADVICE.

IT is ordered by this court; that it shall not be lawful for any person to ask counsel or advice of any magistrate, or commissioner in towns, in any case wherein afterwards he

None to ask counsel of magistrate or commissioner in civil action.

shall or may be plaintiff, before such magistrate or commissioner, under penalty of being disenabled to prosecute any such action, (that he hath so propounded or taken advice as aforesaid,) at the next court where the case shall come to trial, being pleaded by way of bar, either by the defendant or any on his behalf; in which case the plaintiff shall pay full costs to the defendant, and if the defendant ask counsel or advice as aforesaid, he shall forfeit ten shillings for every such offence to the plaintiff. [May, 1649.]

CHAPTER XXXI.

ACTS RESPECTING COURTS, THEIR POWERS AND DUTIES.

General court the chief power.

Sect. 1. It is hereby declared, that the general court consisting of magistrates and deputies, is the chief civil power of this commonwealth; which only hath power to raise money and taxes upon the whole country, and dispose of lands, viz. to give and confirm proprieties appertaining to and immediately derived from the country; and may act in all affairs of this commonwealth according to such power, both in matters of counsel, making of laws, and matters of judicature, by impeaching and sentencing any person or persons according to law, and by receiving and hearing any complaints orderly presented against any person or court:

And it is agreed, that this court will not proceed to judgment in any cause, civil or criminal, before the deputies have taken this oath following. [1634, 42, 44.]

Deputy's oath.

I do swear by the most great and dreadful name of the ever living God, that in all cases wherein I am to deliver my vote or sentence, against any criminal offence, or between parties in any civil case; I will deal uprightly and justly, according to my judgment and conscience; and I will according to my skill and ability, assist in all other publick affairs of this court, faithfully and truly, according to the duty of my place, when I shall be present to attend the service.

Magistrates and deputies to sit apart.

Sect. 2. Forasmuch as after long experience, diverse inconveniences are found in the manner of proceeding in this court, by magistrates and deputies sitting together; it is therefore ordered by this court and authority thereof, that henceforth the magistrates sit apart, and act all business belonging to this court, by themselves; by drawing up bills

and orders, as they shall see good in their wisdom, which having agreed upon, they may present to the deputies to be considered, and accordingly to give their consent or dissent: the deputies in like manner sitting by themselves, and consulting about such orders and laws, as they in their discretion and experience shall find meet for the common good; which agreed on by them, they may present to the magistrates, who having considered thereof, may manifest their consent or dissent thereto:

No act to pass without consent of the major part of both.

And no law, order or sentence shall pass, or be accounted an act of this court, without consent of the greater part of the magistrates on the one party, and the greater number of deputies on the other party; but all orders and conclusions that have passed by approbation of magistrates and deputies as aforesaid, shall be accounted acts of this court, and accordingly be engrossed, which on the last day of every session shall be deliberately read over before the whole court; provided that if the magistrates and deputies shall happen to differ in any case of judicature, either civil or criminal, such case shall be determined by the major vote of the whole court met together. [March 7, 1643.]

Sect. 3. For the electing of the governor, deputy governor, assistants and general officers, upon the day appointed by our patent to hold our yearly election, being the last Wednesday of every Easter term:

Day of election to be attended without summons.

Deputies also to be sent.

None to depart without leave.

It is solemnly and unanimously decreed and established, that henceforth, the freemen of this jurisdiction, shall either in person or by proxy, without any summons attend and consummate the elections on the day aforesaid yearly; at which time also they shall send their deputies with full power to consult of and determine such matters, as concern the welfare of this commonwealth; from which general court, no magistrate or deputy shall depart or be discharged, without the consent of the major part both of magistrates and deputies, during the first four days of the first session, under the penalty of one hundred pounds, nor afterwards under such penalty as the court shall impose, provided that the deputies of Dover, and of such other towns as are not by law bound to send deputies, are at liberty of attending any after sessions. [1643, 53.]

Governor and deputy governor, or three assistants power to reprieve one condemned.

Sect. 4. It is hereby ordered and declared, that the governor and deputy governor, jointly agreeing, or any three assistants consenting, have power out of court to reprieve a condemned malefactor, till the next court of assistants, or general court; and that the general court only hath power to pardon a condemned malefactor.

General court may send forth any person.

Also it is declared, that the general court hath authority to send forth into foreign parts, any member of this commonwealth, of whatsoever quality, condition, office or relation, about any public message or negotiation, provided the party

so sent be acquainted with the affairs he goeth about, and be willing to undertake the service. [1641.]

Power to call a general court. Not to be dissolved but by consent.

SECT. 5. It is ordered by this court, that the governor, deputy governor, or greater part of the assistants, may upon urgent occasion call a general court at any time; but no general court shall be dissolved or adjourned, without the consent of the major part thereof.

Governor and president casting vote.

SECT. 6. It is ordered and declared, that the governor shall have a casting vote, wheresoever there shall be an equi-vote, in the courts of assistants or general court, and the president, or moderator in all courts of civil assemblies. [1641.]

The court being sensible of the great necessity of maintaining the authority of courts and magistrates:

Reproach courts or magistrates

Doth order, that whosoever shall openly or willingly defame any court of justice, or the sentences and proceedings of the same, or any of the magistrates, or other judges of any such court, in respect of any act or sentence therein passed, and be convicted thereof; shall be punished for the same, by

penalty.

whipping, fine, imprisonment, disfranchisement, or banishment, as the quality or measure of the offence shall deserve.

Offences of the members of the court in court how censured.

And if any magistrate or other member of any court, shall use any reproachful or unbeseeming speeches or behaviour, towards any magistrate, judge, or member of that court, in the face of the court; he shall be sharply reproved by the governor or president of the said court, and if the quality of the offence be such as shall deserve a further censure, or if the person so reproved shall reply again without leave; the court may proceed to punish any such offender, by fine or imprisonment, or may bind him over to the next superiour court. And if in a general court, any miscarriage shall be amongst the magistrates, when they are by themselves, it shall be examined and sentenced amongst themselves, if amongst the deputies when they are by themselves, it shall be examined and sentenced when they are by themselves, if it be when the whole court is together, it shall be judged by the whole court. [1637, 41.]

SECT. 7. For the better administration of justice, and easing of the country of unnecessary charges and travel:

Two courts of assistants.

It is ordered by this court and the authority thereof, that there be two courts of assistants yearly kept at Boston, by the governor, or deputy governor and the rest of the magistrates, on the first Tuesday of the first month, and on

their power.

the first Tuesday of the seventh month, to hear and determine all, and only actions of appeal from inferiour courts, all causes of divorce, all capital and criminal causes, extending to life, member or banishment. And that justice be not

Governor may call a court of assistants.

deferred, nor the country needlessly charged, it shall be lawful for the governor, or in his absence the deputy

governor (as they shall judge necessary) to call a court of assistants for the trial of any malefactor in capital causes.

Also there shall be county courts held in the several counties, by the magistrates living in the respective counties, or any other magistrates that can attend the same, or by such magistrates as the general court shall appoint from time to time; together with such persons of worth, where there shall be need, as shall from time to time be appointed by the general court (at the nomination of the freemen of the county) to be joined in commission with the magistrates, so that they may be five in all, three whereof may keep a court, provided there be one magistrate; every of which courts shall have full power to hear and determine all causes, civil and criminal, not extending to life, member or banishment, (which with causes of divorce, are reserved to the court of assistants) and to make and constitute clerks and other needful officers, and to summon juries of inquest, and trials out of the towns of the county; provided no jurors shall be warned from Salem to Ipswich, nor from Ipswich to Salem.

County courts,

who keep them.

How many judges,

their power.

A judgment acknowledged before any two magistrates and the secretary or clerk of any court, shall be good in law, and the clerk's fee for recording the same shall be twelve pence, and if the secretary or clerk be a magistrate, he with one magistrate may do it.

Judgment acknowledged before two magistrates.

SECT. 8. For the more speedy despatch of all causes which shall concern strangers, who cannot without prejudice stay to attend the ordinary courts of justice:

It is ordered, that the governor or deputy governor, with any two magistrates, or when the governor, deputy governor cannot attend it, that any three magistrates shall have power upon the request of such stranger, to call a special court to hear and determine all causes civil and criminal (triable in any county court according to the manner of proceeding in county courts) which shall arise between such strangers, or wherein any such stranger shall be party. And all records of such proceedings, shall be transmitted to the records of the court of assistants, to be entered as trials in other courts, which shall be at the charge of the party cast or condemned in the case. [1639.]

Special courts for strangers.

Records of special courts to be transmitted to the court of assistants.

It is further ordered that it shall be lawful for any stranger, upon legal summons, to enter any action in any court of this jurisdiction, against any person not residing or inhabitant amongst us. [June, 1650.]

Strangers liberty to sue at any court.

SECT. 9. For preventing all occasions of partial or undue proceedings, in courts of justice and avoiding of jealousies:

It is ordered, that in every civil cause, between party and party, where there is between any judge of the court, and any of the parties, the relation of father and son, either by nature or marriage, brother and brother, uncle and nephew,

Judges related to parties not to give sentence.

landlord and tenant in matters of considerable value: such judge, though he may have liberty to give reasonable advice in the case, yet shall have no power to vote or give sentence therein; neither shall sit as a judge, when he shall so plead or give advice therein. [1635.]

Offender to be judged the next court.

SECT. 10. It is ordered by this court; that every person, that is to answer for any criminal cause, whether in prison or under bail; his cause shall be heard and determined at the next court that hath proper cognizance thereof, if it may be done without prejudice of justice. [1641.]

SECT. 11. Forasmuch as the proceedings of this court are often hindered by introducing particular cases of a private nature:

In difficult cases courts may consult with the general court.

It is therefore ordered, that no court shall transfer the cases coming before them, and proper to their cognizance, whether civil or criminal, but if there be difficulty in any case the court shall state the question, leaving out the parties' names, and may present the same to the general court, where it may be resolved; and according to the said resolution of the general court, the inferiour court that presented the question, shall at their next meeting proceed to judgment or sentence. [1654.]

County courts may admit freemen.

SECT. 12. Every court within this jurisdiction where two magistrates are present, may admit any church members, that are fit to be freemen, giving them the oath, and the clerk of each court shall certify their names to the secretary at the next general court. [1641.]

Freemen's names to be recorded.

It is ordered that the secretary at the request of all such as are admitted to the freedom of this colony or any in their behalf, give a true copy out of this court's records of their names by them to be delivered to the clerks or recorders of those courts in the several counties to which they do belong, with a copy of the oath of freemen as it is now stated, that they may there take their oaths, &c. [1666.]

SECT. 13. Whereas through the extremity of the seasons in this country, or other accidents that often happen, that courts of justice are sometimes put by to the great prejudice of justice:

Courts' adjournments.

This court doth therefore order, that henceforth it shall be in the power of any one or more of the magistrates, being present at the time and place where the court is to be kept, to adjourn the said court to some more convenient time, as though the whole court had been met; and all jurymen, witnesses and parties summoned to attend the court, either in civil or criminal cases, according to their respective summons, obligations, attachments or other process are hereby bound to such adjournments, and all proceedings to remain in force as though the ordinary course of time had been attended. [1661.]

Order for fining the members of this court, for their absence &c.

Sect. 14. It being of great concernment to the publick weal of this jurisdiction, that all such as are members of the general court do constantly attend their respective trusts in the said court, it is ordered by this court, and the authority thereof, that henceforth it shall not be lawful for any member of the general court to absent himself from the court, without license of both houses first had and obtained, on penalty of twenty shillings a day, and for the first four days of the court of election, the penalty to be as in the printed law; and that there may be a due observance hereof, the secretary and clerk of the deputies shall in their respective places, enter in their day books, all defaults made by any of the members of either house, and before the rising of the court, present the same to the whole court. [May, 1667.]

Freemen's liberty to choose eighteen assistants.

Sect. 15. It is ordered by this court, that the law limiting the nomination of but fourteen assistants be henceforth repealed; and that the freemen be at liberty to choose eighteen assistants, as the patent hath ordained. [August, 1661.]

Where reviews are to be tried.

Sect. 16. Whether all reviews are to be entered and prosecuted in that court where the action was at first commenced? The court resolves the question on the affirmative. [May, 1672.]

Whether upon an action of review, the costs of former courts where the action hath been tried, shall be granted for whom judgment is given? The court resolves this on the negative.

Magistrates and commissioners power in case of misdemeanours suspected.

Sect. 17. It is ordered that in case of misdemeanour, vehement suspicion thereof where no court is at hand, any magistrate or magistratical commissioner by warrant under his hand, or being present by his command, may empower any person to make search, and apprehend any disorderly person whereby their misdemeanours may be brought forth, and punished, and further wills of like kind prevented; which man, so empowered or commanded, shall in the particular he is employed in, have equal power with a constable for requiring aid and assistance. [October, 1684.]

Law as to a chancery.

Sect. 18. Whereas it is found by experience that in many cases and controversies betwixt parties, wherein there is matter of apparent equity, there hath been no way provided for relief against the rigour of the common law, but by application to the general court; where, by reason of the weighty affairs of the country of more publick concernment, particular persons have been delayed to their no small trouble and charge, and also great expense occasioned to the publick by the long attendance of so many persons as that court consists of, to hear and determine personal causes brought before them. For ease and redress whereof it is ordered and enacted by this court, that the magistrates of

each county court within this jurisdiction, being annually chosen by the freemen, be and hereby are authorized and empowered as a court of chancery upon bill of complaint or information exhibited to them, containing matter of apparent equity, to grant summons or process as in other cases is usual, briefly specifying the matter of complaint to require the defendant's appearance at a day and place assigned by the court to make answer thereunto; and also to grant summons for witnesses in behalf of either party, to examine parties and witnesses by interrogations upon oath, proper to the case, if the judges see cause to require it; and if any party being legally summoned shall refuse or neglect to make his appearance and answer, the case shall proceed to hearing and issue as is provided in cases at common law; and upon a full hearing and consideration of what shall be pleaded and presented as evidence in any such case, the court to make their decree and determination according to the rule of equity, secundum equum et bonum, and to grant execution thereon; provided always, that either party, plaintiff or defendant, who shall find himself aggrieved at the determination of the said county court, shall have liberty to make his appeal to the magistrates of the next court of assistants, giving in security for prosecution, and the reasons of his appeal to the officer of the said county court, as the law provides in other cases; where the judges of the former court may have liberty to allege and shew the grounds and reasons of their determination, but shall not vote nor judge in the said court of assistants; and the judgment or decree of the said court of assistants shall be a full and final issue and determination of all such cases, without any after review or appeal; unless, upon application made by either party to the general court, the said court shall see meet to order a second hearing of the case at the county court, with liberty of appeal as aforesaid, or in any arduous and difficult cases to admit a hearing and determination by the general court; and that a suitable oath be drawn up and agreed upon to be administered to those who shall be judges; and in all cases of this nature brought to the county court, the party complaining, before his bill be filed and process granted, shall give sufficient security to the clerk of the court to defray the necessary charge and attendance of the court. [May, 1685.]

CHAPTER XXXII.

AN ACT AGAINST CRUELTY TO BRUTE CREATURES.

It is ordered by this court, that no man shall exercise any tyranny or cruelty towards any brute creatures, which are usually kept for the use of man. [1641.] Cruelty.

CHAPTER XXXIII.

ACTS AS TO SUDDEN DEATH, &c.

Sect. 1. It is ordered by this court and the authority thereof, that whensoever any person shall come to any sudden, untimely or unnatural death; some assistant or the constable of the town, shall forthwith summon a jury of twelve discreet men to inquire of the cause and manner of their death, who shall present a true verdict thereof to some near assistant, or the next county court upon their oath. [1641.] Untimely death to be inquired by a jury.

Sect. 2. This court considering how far satan doth prevail upon several persons in this jurisdiction to make away themselves, judgeth that God calls them to bear testimony against such wicked and unnatural practice, that others may be deterred therefrom, do therefore order, that from henceforth, if any person, inhabitant or stranger, shall at any time be found by any jury to lay violent hands on themselves, or be wilfully guilty of their own death, every such person shall be denied the privilege of being buried in the common burying place of christians, but shall be buried in some common highway, where the selectmen of the town where such persons did inhabit, shall appoint, and a cart load of stones laid upon the grave as a brand of infamy, and as a warning to others to aware of the like damnable practice. [October, 1660.]

CHAPTER XXXIV.

ACTS RESPECTING DEBTS BY BOOK.

SECT. 1. ON complaint, and consideration of sundry inconveniences both to creditors and debtors, through want of seasonable examination and balancing of book accounts:

Book debts to be balanced within three years.

It is ordered, and by this court enacted, that all such book debts as are now standing out, or that hereafter shall be made, and that shall not within three years after publication hereof, or within three years after such debt as hereafter shall be made, be accounted for or balanced with the original debtor or his attorney, agent, assignee, or other lawful successor or substitute, and on account or balance thereof, assured by specialty given for it, or witnessed by subscribing the debtor or other accountant's name to the creditor's book, or subscription of the witnesses to such account, shall not be pleadable in any court; unless such book debt shall within the time before limited, be prosecuted or proved in such court as hath proper cognizance thereof, by evidence competent and approved by the said court: and the evidence there recorded, and the record thereof, shall secure the creditor, his executors and assigns, unless the debtor or his assigns shall disprove the same, within one year after such proof made, or recovery of the said debt, if such debtor, his or her agent, attorney, assignee, substitute, executor, administrator or other lawful successor, be or shall be within this jurisdiction, or elsewhere, and have due notice from the creditor thereof. [May, 1669.]

Three years further added relating to book debts.

SECT. 2. Whereas by the law made May, 1669, respecting book debts; it is declared, that all book debts shall be cleared within three years, as is therein expressed, after which time no book debt shall be pleadable in any court: upon a general complaint, that the said law will prove to the real detriment of very many of our inhabitants, and the utter undoing of some if a greater number of years be not allowed to shut up accounts:

It is therefore ordered, and is hereby declared; that there shall be three years more added for the advantage of debtors and creditors to issue their accounts, that all grounds of complaint in this kind may be removed. [May, 1672.]

CHAPTER XXXV.

ACTS RESPECTING DEPUTIES IN THE GENERAL COURT.

Deputies chosen by paper.

SECT. 1. IT is ordered by this court and the authority hereof, that henceforth it shall be lawful for the freemen of every town, to choose (by papers) deputies for the general court; who have liberty to meet together, to confer and prepare such publick business, as by them shall be thought fit to be considered of at the next general court, who also shall have the full power of all the freemen deputed to them, for the making and establishing of laws, granting lands, and to deal in all other affairs of the commonwealth, wherein the freemen have to do, the matter of election of magistrates and other officers only excepted: wherein every freeman is to give in his vote; provided that no town shall send more than two deputies, and no town that hath not to the number of twenty freemen shall send more than one deputy; and such plantations as have not ten freemen shall send none, but such freemen may vote with the next town, in the choice of their deputies, till this court take further order. And all towns that have not more than thirty freemen, shall be at liberty of sending or not sending deputies to the general court. [1636. 38. 53.]

Their power.

Number of deputies to be sent from particular towns.

Liberty to choose deputies dwelling any where in this jurisdiction.

SECT. 2. And the freemen of any shire or town, have liberty to choose such deputies for the general court, either in their own shire town, or elsewhere as they judge fittest, so be it they be freemen, and inhabiting this jurisdiction.

Deputies may order their own house.

And when the deputies for the several towns are met together at any general court, it shall be lawful for them or the major part of them, to hear and determine any difference that may arise about the election of any of their members, and to order what may concern the well ordering of their body.

And because we cannot foresee what variety and weight of occasions may fall into future consideration, and what counsels we may stand in need of:

No deputies to hold longer than one year.

It is ordered that the deputies of the general court, shall not at any time be stated and continued but from court to court, or at most but for a year, that the country may have an annual liberty, to do in that case what is most behoofful for the welfare thereof. [1641. 34. 35.]

Deputies to be orthodox.

SECT. 3. And it is further ordered, that no man, although a freeman, shall be accepted as a deputy in the general court, that is unsound in judgment, concerning the main points of christian religion, as they have been held forth

and acknowledged by the generality of the protestant orthodox writers; or that is scandalous in his conversation, or that is unfaithful to this government.

SECT. 4. And it is further ordered, that it shall not be lawful for any freeman to make choice of any such person as aforesaid, that is known to himself to be under such offence or offences specified, upon pain or penalty of five pounds, and the cases of such persons to be tried by the whole general court. [1654.]

Constable to return who are chosen deputies, and for what time.

SECT. 5. And henceforth the constables of each town, shall return the name of the person or persons chosen by the freemen to be deputies for the general court, and the time for which they are chosen, whether for the first session or for the whole year. And every constable that shall fail in his duty herein shall forfeit the sum of twenty shillings, to be paid to the common treasury; and all persons so chosen as aforesaid, accepting thereof, which shall be absent from the house, during the time of their sitting, without just grounds so judged by the house, shall pay twenty shillings a day for every such defect, and the several returns of each constable, shall be kept on file by the clerk of the deputies until the court be ended. [1654.]

Common attorney no deputy.

SECT. 6. It is ordered by this court and the authority thereof, that no person who is an usual and common attorney in any inferiour court, shall be admitted to sit as a deputy in this court. [October, 1663.]

CHAPTER XXXVI.

AN ACT RELATING TO DISTRESSES.

Distress upon corn or hay, &c.

IT is ordered by this court and the authority thereof, that no man's corn or hay that is in the field, or upon the cart, nor his garden stuff, nor any thing subject to present decay, shall be taken in distress, unless he that takes it doth presently bestow it where it may not be embezzled, nor suffer spoil or decay, or give security to satisfy the worth thereof, if it comes to any harm. [1641.]

CHAPTER XXXVII.

AN ACT RESPECTING DOWER, &c.

FORASMUCH as no provision hath been made for any certain maintenance of wives after the decease of their husbands:

It is ordered by this court and the authority thereof, that every married woman, (living with her husband in this jurisdiction, or other where absent from him with his consent, or through his mere default, or inevitable providence, or in case of divorce, where she is the innocent party) that shall not before marriage be estated by way of jointure, in some houses, lands, tenements, or other hereditaments for term of life, shall immediately after the death of her husband have right and interest, by way of dowry, in and to one third part of all such houses, lands, tenements and hereditaments, as her husband was seized of to his own use, either in possession, reversion or remainder, in any estate of inheritance, (or frank-tenement not then determined) at any time during the marriage, to have and enjoy for the term of her natural life, according to the estate of such husband, free and freely discharged of, and from all titles, debts, rents, charges, judgments, executions and other incumbrances whatsoever, had, made or suffered by her husband, during the said marriage between them, or by any other person claiming by, from or under him, or otherwise, than by some act or consent of such wife signified by writing under her hand, and acknowledged before some magistrate or others, authorized thereunto, which shall bar her from any right or interest in such estate. And if the heir of the husband or other person interested shall not, within one month after lawful demand made, assign and set out to such widow her just third part with conveniency, or to her satisfaction, according to the intent of this law, then upon a writ of dowry, in the court of that shire where the said houses, lands, tenements or other hereditaments shall lie, or in the court of assistants, if the same lie in several shires, her third part or dowry shall be assigned her, to be set out in several, by metes and bounds, by such persons as the same court shall appoint for that purpose, with all costs and damages sustained; provided always this law shall not extend to any houses, lands, tenements or other hereditaments sold or conveyed away by any husband bona fide, for valuable consideration before the last of November, one thousand six hundred and forty seven. Provided also that every such widow so endowed as aforesaid, shall not commit or suffer any strip or waste, but shall

Wives to enjoy the third of their husbands' lands, &c.

Widow's third part to be set out.

Not to suffer strip or waste.

maintain all such houses, fences and inclosures as shall be assigned to her for her dowry, and shall leave the same in good and sufficient reparation in all respects. [1641.]

CHAPTER XXXVIII.

AN ACT AS TO DRIVING CATTLE, AND RIGHT TO FEED THEM IN OPEN PLACES.

It is ordered by this court and the authority thereof, that if any man shall have occasion to lead, or drive cattle from place to place that is far off, so that they be weary, or hungry, or fall sick or lame, it shall be lawful to rest and refresh them for a competent time in any open place that is not corn, meadow or inclosed for some particular use. [1641.]

CHAPTER XXXIX.

ACTS RESPECTING ECCLESIASTICAL CONCERNS.

Liberty to gather churches

Sect. 1. All the people of God within this jurisdiction, who are not in a church way, and be orthodox in judgment, and not scandalous in life, shall have full liberty to gather themselves into a church estate, provided they do it in a christian way, with the observation of the rules of Christ revealed in his word.

with approbation of magistrates and elders.

Provided also, that the general court doth not, nor will hereafter approve of any such companies of men, as shall join in any pretended way of church-fellowship, unless they shall acquaint three or more magistrates dwelling next, and the elders of the neighbour churches where they intend to join and have their approbation therein.

Sect. 2. It is further ordered, that no person being a member of any church which shall be gathered without the approbation of the magistrates and the said churches, shall be admitted to the freedom of this commonwealth.

Sect. 3. Every church hath free liberty to exercise all the ordinances of God, according to the rule of the scripture.

SECT. 4. Every church hath free liberty of election and ordination of all her officers from time to time, provided they be able, pious and orthodox. To choose church officers.

SECT. 5. Every church hath also free liberty of admission, recommendation, dismission and expulsion, or disposal of their officers and members upon due cause, with free exercise of the discipline and censures of Christ, according to the rules of the word. Members.

SECT. 6. No injunction shall be put upon any church, church officer or member in point of doctrine, worship or discipline, whether for substance or circumstance besides the institution of the Lord. No human institutions.

SECT. 7. Every church of Christ hath freedom to celebrate days of fasting and prayer and of thanksgiving, according to the word of God.

SECT. 8. The elders of churches and other brethren and messengers have liberty to meet monthly, quarterly or otherwise, in convenient numbers and places for conference and consultation, about christian and church questions and occasions, provided that nothing be concluded and imposed by way of authority from one or more churches upon another, but only by way of brotherly conference and consultation. Elders' meeting.

SECT. 9. All churches also have liberty to deal with any of their members in a church way, that are in the hands of justice, so it be not to retard and hinder the course thereof.

SECT. 10. Every church hath liberty to deal with any magistrate, deputy of court or other officer whatsoever, that is a member of theirs, in a church way, in case of apparent and just offence given in their places, so it be done with due observance and respect. But no church censure shall degrade or depose any man from any civil dignity, office or authority he shall have in the commonwealth. Churches liberty to deal with their members.

SECT. 11. The civil authority here established, hath power and liberty to see the peace, ordinances and rules of Christ be observed in every church, according to his word; as also to deal with any church member in a way of civil justice, notwithstanding any church relation, office or interest.

SECT. 12. Private meetings for edification in religion, amongst christians of all sorts, shall be allowed, so it be done without just offence, for number, time, place and other circumstances. [1641.] Private meetings.

SECT. 13. The treasurer of the country shall defray the charges of the elders of our churches, when they are employed by special order of the general court. [1642.]

Whereas it is the duty of the christian magistrate to take care the people be fed with wholesome and sound doctrine, and in this hour of temptation wherein the enemy designeth

to sow corrupt seed, every company cannot be thought able or fit to judge of the Gospel qualifications required in the publick dispensers of the word, and all societies of christians are bound to attend order and communion of churches, considering also the rich blessing of God, flowing from the good agreement of the civil and church estate, and the horrible mischiefs and confusions that follow on the contrary:

Constant preachers to be without offence.

It is therefore ordered, that henceforth no person shall publickly and constantly preach to any company of people, whether in church society or not, or be ordained to the office of a teaching elder, where any two organick churches, council of state, or general court shall declare their dissatisfaction thereat, either in reference to doctrine or practice, the said offence being declared to the said company of people, church or person, until the offence be orderly removed; and in case of ordination of any teaching elder, timely notice thereof shall be given unto three or four of the neighbouring organick churches, for their approbation. [1658.]

SECT. 14. Forasmuch as the open contempt of God's word, and messengers thereof, is the desolating sin of civil state and churches:

Open opposers of the word.

It is ordered, that if any christian (so called) within this jurisdiction, shall contemptuously behave himself towards the word preached, or the messengers thereof, called to dispense the same in any congregation, when he doth faithfully execute his service and office therein, according to the will and word of God; either by interrupting him in his preaching, or by charging him falsely with any error, which he hath not taught in the open face of the church, or like a son of Korah, cast upon his true doctrine, or himself any reproach to the dishonour of the Lord Jesus who hath sent him, and to the disparagement of his holy ordinance, and making God's ways contemptible and ridiculous: that every such person or persons (whatsoever censure the church may pass) shall for the first scandal be convented and reproved openly by the magistrate at some lecture, and bound to their good behaviour.

And if a second time they break forth into the like contemptuous carriages, they shall either pay five pounds to the publick treasury, or stand two hours openly upon a block or stool, four feet high, on a lecture day, with a paper fixed on his breast, written in capital letters, AN OPEN AND OBSTINATE CONTEMNER OF GOD'S HOLY ORDINANCES, that others may hear and be ashamed of breaking out into the like wickedness. [1646.]

And every christian as aforesaid, that shall go about to destroy or disturb the order and peace of the churches established in this jurisdiction, by open renouncing their church estate, or their ministry, or other ordinances dis-

pensed in them, either upon pretence that the churches were not planted by any new apostle, or that ordinances are for carnal christians, or for babes in Christ, and not for spiritual or illuminated persons, or upon any other such like groundless conceit; every such person who shall be found culpable herein, after due means of conviction, shall forfeit to the publick treasury, forty shillings for every month, so long as he shall continue in that his obstinacy. [1646.]

Disturbers of order and peace of churches, penalty.

Sect. 15. Wherever the ministry of the word is established, according to the order of the gospel throughout this jurisdiction:

Every person shall duly resort and attend thereunto respectively on the Lord's days, and upon such publick fast days, and days of thanksgiving, as are to be generally observed by appointment of authority. And if any person within this jurisdiction shall without just and necessary cause, withdraw himself from the public ministry of the word, after due means of conviction used, he shall forfeit for his absence from every such publick meeting five shillings. And all such offences may be heard and determined from time to time, by any one or more magistrates. [1646.]

Absence from meeting.

Sect. 16. To the end there may be convenient habitations for the ministers of the word:

It is ordered, that the inhabitants of every town shall take care to provide the same, either by hiring some convenient house, for the use of the present minister, or by compounding with him, allowing him a competent and reasonable sum to provide for himself, so long as he shall continue with them, or by building or purchasing a house for the minister and his successors in the ministry, as the major part of the said inhabitants shall agree. And the particular sums assessed upon each person by a just rate, shall be collected and levied as other town rates.

Ministers' houses how to be provided for.

Sect. 17. That there may be a settled and encouraging maintenance of ministers in all towns and congregations within this jurisdiction:

It is ordered, that the county court in every shire, shall upon information given them of any defect, of any congregation or town within the shire, order and appoint what maintenance shall be allowed to the minister of the place, and shall issue out warrants to the selectmen to assess the inhabitants, which the constable of the said town shall collect and levy as other town rates. And it is hereby declared to be our intention that an honourable allowance be made to the minister, respecting the ability of the place, and if any town shall find themselves burdened by the assessments of the county court, they may complain to the court, which will at all times be ready to give just release to all men. [August, 1654.]

Provision for minister's maintenance.

Sect. 18. It being the great duty of this court, to provide that all places and people within our gates be supplied of an able and faithful minister of God's holy word:

Be it therefore ordered and enacted by this court, and the authority thereof, that the county courts in their respective precincts, do diligently and carefully attend the execution of such orders of this court, as concerns the maintenance of the ministry, and the purging of their towns and peculiars from such ministry and publick preachers as shall be found vicious in their lives, or perniciously heterodox in their doctrine; and for all places destitute of an able and faithful ministry, that they use their best endeavour for the procuring and settling of such faithful labourers in God's vineyard, and that the charges of their procuring, and settling, be levied on the inhabitants, as the law for maintenance of ministers directs; and that for the future there may be no neglect hereof, the presidents of each county court shall duly from time to time give it in charge to the grand juries of their respective courts to present all abuses and neglects of this kind, and that with all care and diligence the same be redressed, that so the name of the Lord our God being known in our dwellings, and exalted in our gates, he may still delight in us, to continue his favourable presence with us, and our unparalleled enjoyments both temporal and spiritual, which through the rich mercy of God in Christ hitherto we have enjoyed, and not be provoked through our profane slightings and despising thereof, to bereave us and our posterities of such choice mercies. [May, 1660.]

Provision for an able ministry.

Sect. 19. Whereas the christian magistrate is bound by the word of God to preserve the peace, order or liberty of the churches of Christ, and by all due means to promote religion in doctrine and discipline, according to the word of God; and whereas by our law,

It is ordered and declared, that every church hath free liberty of calling, election and ordination of all her officers, from time to time, provided they be able, pious, and orthodox: for the better explanation of the said law, and as an addition thereunto, this court doth order and declare, and be it hereby ordered and enacted, that by the church, is to be meant, such as are in full communion only; and that the teaching officer or officers of such church or churches, we do intend shall be the minister or ministers to all the people in that town where such church or churches are planted; and that no inhabitant in any town shall challenge a right unto, or act in the calling or election of such officer or minister, until he be in full communion, upon the penalty of being accounted a disturber of peace and order, and to be punished by the court of that shire, either by admonition, security for the good behaviour, fine, or imprisonment, according to the quality and degree of the offence. [October, 1668.]

Choice of church officers.

Law as to erecting of new meeting houses without consent of freemen, &c.

Sect. 20. Forasmuch as it hath too often happened that through differences arising in several towns, and on other pretences there hath been attempts by some persons to erect new meeting houses, although on pretence of the publick worship of God on the Lord's days, yet thereby laying a foundation (if not for schism and seduction to errors and heresies) for perpetuating divisions and weakening such places where they dwell, in the comfortable support of the ministry orderly settled amongst them:

For prevention whereof, for the future it is ordered by this court and the authority thereof, that no person whatsoever without the consent of the freemen of the town where they live first orderly had and obtained at a publick meeting assembled for that end and license to the county court, or in defect of such consent and license by the special order of the general court, shall erect or make use of any house as abovesaid, and in case any person or persons shall be convicted of transgressing this law, every such house or houses wherein such persons shall so meet more than three times, with the land whereon such house or houses stand, and all private ways leading thereto shall be forfeited to the use of the county and disposed off by the county treasurer by sale or demolishing as the court that gave judgment in the case shall order. [1679.]

CHAPTER XL.

ACTS RELATING TO ELECTIONS.

Election by indian corn and beans.

Sect. 1. It is ordered by this court and the authority thereof, that for the yearly choosing of assistants, the freemen shall use Indian corn and beans, the Indian corn to manifest election, the beans contrary; and if any freeman shall put in more than one Indian corn or bean, for the choice or refusal of any publick officer, he shall forfeit for every such offence, ten pounds, and that any man that is not free, or hath not liberty of voting, putting in any vote, shall forfeit the like sum of ten pounds. [1643.]

None but freemen to put in votes.

Sect. 2. For the preventing many inconveniences, that otherwise may arise upon the yearly day of election, and that the work of that day may be the more orderly, easily and speedily issued:

It is ordered by this court and the authority thereof; that the freemen of this jurisdiction, which shall not per-

Elect by proxies sent, sealed up.

sonally appear at Boston, to give in their votes on the day of election, shall and may in their several towns, from time to time give in their votes for elections, before their deputy and the constable, who shall take them and seal them up in distinct papers, and send them to the court of elections, all the assistants to be chosen by Indian corn and beans, as abovesaid.

Election of Governor &c. by papers.

The governor, deputy governor, major general, treasurer, secretary, and commissioners of the United Colonies, by writing the names of the persons elected, in papers open, or once folded, not twisted nor rolled up, that they may be the sooner perused. And such small villages as send no deputies, the constable thereof, with two or three of the chief freemen shall receive the votes of the rest of the freemen, and deliver them together with their own sealed up, to the deputy of the next town, who shall carefully convey the same unto the said court of election. [1647.]

Sect. 3. Forasmuch as the choice of assistants or magistrates yearly, is of great concernment, and with all care and circumspection to be attended:

Nomination of magistrates in towns.

It is ordered by this court and the authority thereof, that the constables of every town within this jurisdiction, shall call together all their freemen some day in the second week of the first month yearly to give in their votes in distinct papers for such persons (being freemen and resident within this jurisdiction, as well the magistrates in present being as others) whom they desire to have chosen for magistrates or assistants at the next court of election, not exceeding the number of eighteen, and no freeman shall put in above one vote for one person, under the penalty of ten pounds for every offence. [1652.]

Votes to be sent to the shire town.

And the said freemen (so met together) or the major part of them, shall then and there appoint one to carry their votes sealed up unto their shire towns, upon the last fourth day of the week in the first month following, at twelve of the clock from time to time, which persons for each town so assembled, shall appoint one of themselves as a commissioner of each shire, to carry them to Boston the second third day of the second month, there to be opened and perused in the presence of one or two magistrates (if they be in town) if otherwise, by those persons that brought them, at the court house in Boston, or such other place as the commissioner of Suffolk shall appoint; and those eighteen that have most votes, shall be the men (and they only) which shall be nominated at the court of election for magistrates or assistants as aforesaid, and the said commissioner of each shire, shall forthwith signify to the constable of the several towns within their county, in writing under their hands, the names of those eighteen persons aforesaid, all which the constable in each town shall timely signify to

Commissioner of the shire to return the names of the persons nominated to the constables.

their freemen. And as any have more votes than other, so shall they be nominated for election, except such of the eighteen who were magistrates the year before, who shall have precedency of all others in nomination on the day of election. And if any person be trusted in this order, shall fail in the discharge of their trust, shall forfeit ten pounds. [1649. 58.]

Old magistrates to be first put to election.

SECT. 4. It is declared by this court, to be the constant liberty of the freemen of this jurisdiction, to choose yearly at the court of election out of the freemen, all the general officers of this jurisdiction, and if they please to discharge them at the court of election, by way of vote, they may do it without shewing cause; but if at any other general court, we hold it due justice that the reason thereof be alleged and proved. By general officers we mean our governor, deputy governor, assistants, treasurer, major general, admiral at sea, commissioners for the United Colonies, secretary of the general court, and such others as are, or hereafter may be of like general nature. [1641.]

Freemen to choose all general officers.

SECT. 5. Whereas it is found by experience, that there are many who are inhabitants of this jurisdiction, who are enemies to all government, civil and ecclesiastical, who will not yield obedience to authority, but make it much of their religion to be in opposition thereto, and refuse to bear arms under others, who notwithstanding combine together in some towns, and make parties suitable to their designs, in election of such persons according to their ends:

It is therefore ordered by this court and the authority thereof, that all persons, quakers or others, which refuse to attend upon the publick worship of God here established; that all such persons whether freemen or others, acting as aforesaid, shall, and hereby are made uncapable of voting in all civil assemblies during their obstinate persisting in such wicked ways and courses, and until certificate be given of their reformation.

Persons exempt from voting in elections.

SECT. 6. And it is further ordered, that all those fines and mulcts of any such delinquents as aforesaid, which are not gathered nor paid to the several treasurers of the counties, as also what fines shall be laid on them for the future, shall be delivered by the order of the county treasurers respectively to the selectmen of the several towns whereunto they belong, to be by them improved for the poor of the town. [October, 1663.]

SECT. 7. It is ordered by this court and the authority thereof, that there shall be annually chosen according to our charter, eighteen assistants besides the governor and deputy governor, in manner following; the constables of each town shall give timely notice unto, and warn their freemen to meet upon the second Tuesday of March yearly, who shall then put in their votes in distinct papers for such

Order about elections.

persons being freemen and resident in this jurisdiction whom they desire to have chosen for magistrates or assistants, the next court of election not exceeding the number of twenty, and all in one list clearly distinguished, and no freeman shall put in above one vote for one person, under the penalty of ten pounds for every offence, and the said freemen so met, or the major part of them shall then and there appoint one to carry their votes sealed up unto their shire town upon the last Wednesday of March at twelve of the clock, which persons for each town so assembled shall appoint two of themselves commissioners for each shire (Hampshire only excepted) to carry them unto Boston the second Tuesday in April, at nine of the clock in the morning, there to be opened and perused in the presence of the governor or deputy governor, or so many magistrates as please to attend it, otherwise by those persons that brought them, at the town house in Boston, or such other place as the commissioners for Suffolk shall appoint, and all lists that exceed twenty, or have one man's name more than once, shall be thrown away. And those twenty-six who have most votes shall be the men, and they only, which shall be put to vote at the court of election for magistrates or assistants as aforesaid. And the commissioners of each shire shall forthwith signify to the constables of the several towns within their county, in writing under their hands, the names of those twenty-six persons aforesaid, with the number of votes for each, which the constables of each town shall signify to their freemen, and as they have more votes than others, so shall they be nominated for election, except such, who were magistrates heretofore, who shall have the precedency of all others in nomination on the election day. [October, 1680.]

Sect. 8. It is further ordered, that the constable of each town shall call together their freemen on the Wednesday next before the election day from year to year, when and where such as please may put in their proxies of election, viz. of governor, deputy governor, and all other publick officers in distinct papers as formerly, and for twenty assistants to be chosen out of the twenty-six persons in nomination, by Indian corn; which proxies shall be sealed up, with the name of the person written on the paper, and delivered to the deputy of the said town, or some other mete person chosen by the freemen, who shall bring the same to Boston on the election day, when and where all the freemen who have not voted by proxy, are required to appear at the court house by eight of the clock in the morning, to bring in their votes as aforesaid, where the votes of the governor and deputy governor are first to be opened and sorted, and the chosen proclaimed, and then the votes for the twenty-six persons chosen by corn, to be opened and counted, and those eighteen who have most votes are to be proclaimed assistants for the

year ensuing. And all other general officers to be chosen as formerly: moreover all the votes that are brought in for nomination and election, shall be brought in by the person voting, or sent by the deputy or the constable of the town where such person dwelleth, or otherwise lose their votes. And if any person be trusted in this order, shall fail in discharge of his trust, he shall forfeit ten pounds. [October, 1680.]

Sect. 9. It is further ordered, that the commissioners of each county, before they open their votes, and so all that are admitted to receive in, sort and count the votes on the day of election, shall be under oath as the last year. [October, 1680.]

CHAPTER XLI.

AN ACT RESPECTING ESCHEATS.

It is ordered by this court and the authority thereof, that where no heir or owner of houses, lands, tenements, goods or chattels can be found, they shall be seized to the publick treasury, till such heirs or owners shall make due claim thereto, unto whom they shall be restored upon just and reasonable terms. [November, 1646.]

CHAPTER XLII.

ACTS RESPECTING FAIRS AND MARKETS.

It is ordered by the authority of this court, that there shall henceforth be a market kept at Boston in the county of Suffolk, upon the fifth day of the week from time to time. Boston.

And at Salem in the county of Essex, upon the fourth day of the week from time to time. Salem.

And at Lynn on the third day of the week from time to time. Lynn.

And at Charlestown in the county of Middlesex upon the sixth day of the week from time to time. Charlestown.

It is also ordered and hereby granted to Boston aforesaid, to have two fairs in a year; on the first third day of the

third month, and on the first third day of the eighth month, from year to year to continue for two or three days together.

Also to Salem aforesaid, to have two fairs in a year, on the last fourth day of the third month, and the last fourth day of the seventh month from year to year.

Watertown. Also to Watertown, in the county of Middlesex, two fairs in a year, on the first sixth day of the fourth month, and the first sixth day of the seventh month.

Also to Dorchester, in the county of Suffolk, two fairs in a year, on the fourth third day of the first month, and the last fourth day of the eighth month, from year to year. [1633. 34. 36. 38. 48.]

CHAPTER XLIII.

ACTS RELATING TO FERRIES.

SECT. 1. FOR settling all common ferries in a right course, both for the passengers and owners:

Men may pass ferries in their own boats. It is ordered by this court and the authority thereof, that whosoever hath a ferry granted upon any passage, shall have the sole liberty for transporting passengers, from the place where such ferry is granted, to any other ferry place, where ferry boats use to land; and any ferry boat that shall land passengers at any other ferry, may not take passengers from thence, if the ferry boat of that place be ready; Provided this order shall not prejudice the liberty of any that do use to pass in their own or neighbours' canoes or boats to their ordinary labour or business. But no ferry

Ferry men not to carry in canoes. man shall carry over the water any passengers in a canoe, but in case of necessity, and upon his own desire, under the pain of forfeiture of the canoe or the value thereof to the treasury.

And at Weymouth ferry, every single person shall pay for his passage two pence.

And all ferry men are allowed to take double pay at all common ferries after day light is done, and those that make not present pay, being required, shall give their names in writing, or a pawn to the ferry men, or else he may complain of any such to a magistrate for satisfaction.

Magistrates and deputies to pass free. And it is ordered, that all magistrates, and such as are, or from time to time shall be chosen deputies of the general court, with their necessary attendance, viz. a man and a

horse at all times, during the time of their being magistrates or deputies (but not their families) shall be passage-free over all ferries, that pay no rent to the country.

Sect. 2. And for the preventing of danger in the passing at common ferries:

It is ordered, that no person shall press or enter into a ferry boat contrary to the will of the ferry man, or of the most of the passengers first entered, upon pain of ten shillings for every such attempt.

None to enter the ferry boat without leave of the ferry men, magistrates, deputies or elders.

And that every ferry man that shall permit or allow any person to come into his boat, against the will of any of the magistrates or deputies, or any of the elders shipped in such boat, or the greater part of the passengers in the said boat, shall forfeit for every person so admitted or received, against such their will so declared, the sum of twenty shillings.

And it shall be in the power of any of the ferry men, to keep out, or put out of his boat, any person that shall press, enter into, or stay in any such ferry boat, contrary to this order.

And it is further ordered, that all persons shall be received into such ferry boats according to their coming first or last, only all publick persons, or such as go upon publick or urgent occasions, as physicians, chirurgeons and midwives, and such other as are called to women's labours, such shall be transported with the first. [1641. 44. 46. 47.]

Men pass as they come except publick persons.

CHAPTER XLIV.

ACTS RESPECTING FINES.

It is ordered by this court and authority thereof, that every offender fined for the breach of any penal law, shall forthwith pay his or their fine or penalty, or give security speedily to do it, or be imprisoned, or kept to work till it be paid, unless the court or judge that imposed the fine, see cause to respite the same; and in all courts, where any fine or fines or other sums of money shall be assessed or received; and also when any magistrate or commissioner, shall assess any fines, or receive any sum, for the use of the country, by virtue of any special order, the secretary or clerk of each court, and every such magistrate and commissioner, shall within fourteen days, send a transcript or note of the said fines and other dues to the treasurer of the coun-

Fines to be paid presently.

Clerk to return all fines to the treasurer in fourteen days.

try or county to whom it doth belong, who shall forthwith give warrant to the marshal to collect and levy the same: and if no goods can be found to satisfy such fine or other dues, the marshal shall attach the body of such persons, and imprison them till satisfaction be made; provided that any court of assistants or county court, may discharge any such person from imprisonment, if they be unable to make satisfaction. [1638. 46.]

Marshal to attach the body where goods are not, &c.

CHAPTER XLV.

AN ACT RESPECTING FIRES, AND BURNING OF LANDS, &c.

Firing of ground when lawful, when forbidden.

SECT. 1. IT is ordered by this court and authority thereof, that whosoever shall kindle any fires in the woods, or grounds lying in common, or inclosed, so as the same shall run into corn grounds or inclosures, before the tenth day of the first month, or after the last of the second month, or on the last day of the week, or on the Lord's day, shall pay all damages, and half so much for a fine, or if not able to pay, then to be corporally punished, by warrant from one magistrate, or the next county court, as the offence shall deserve, not exceeding twenty stripes for one offence. Provided that any man may kindle fire in his own ground so as no danger come thereby, either to the country or to any particular person; and whosoever shall wittingly and willingly burn or destroy any frame, timber, hewed, sawed or riven heaps of wood, charcoal, corn, hay, straw, hemp or flax, he shall pay double damages.

SECT. 2. Whereas some dwelling houses, and other houses within this jurisdiction, have been set on fire, and the means or occasion thereof not discovered, though some persons have been vehemently suspected to have been instrumental therein: the court taking into consideration the danger of such a wicked practice, especially in towns where the houses are near adjoining, and there being no law yet provided for the punishment of so heinous a crime:

Doth therefore hereby order, and be it enacted by the authority of this court, that any person or persons whatsoever, of the age of sixteen years and upward, that shall after the publication hereof, wittingly and willingly set on fire any barn, stable, mill, out house, stack of wood, corn or hay, or any other thing of like nature, shall upon due con-

viction by testimony or confession, pay double damages to the party damnified, and be severely whipt.

Sect. 3. And if any person of the age aforesaid shall after the publication hereof, wittingly, and willingly, and feloniously, set on fire any dwelling house, meeting house, store house, or shall in like manner set on fire any out house, barn, stable, leanto, stack of hay, corn or wood, or any thing of like nature, whereby any dwelling house, meeting house or store house, cometh to be burnt, the party or parties vehemently suspected thereof shall be apprehended by warrant from one or more of the magistrates, and committed to prison, there to remain without bail, till the next court of assistants, who upon legal conviction by due proof, or confession of the crime, shall adjudge such person or persons to be put to death, and to forfeit so much of his lands, goods or chattels, as shall make full satisfaction to the party or parties damnified. [1652.] Burning houses. Capital.

CHAPTER XLVI.

ACTS RELATING TO FISH AND FISHERMEN.

Sect. 1. Whereas it hath been a custom for foreign fishermen to make use of such harbours and grounds in this country, as have not been inhabited by Englishmen, and to take timber and wood at their pleasure for all their occasions, yet in these parts which are now possessed, and the lands disposed in proprieties, unto several towns and persons, by the king's grant, under the great seal of England:

It is declared, that it is not lawful for any person, either fisherman or other, either foreigner or of this country, to enter upon the lands so appropriate to any town or person, or to take wood or timber in any such place, without the license of such town or proprietor; and if any person shall trespass herein, the town or proprietor so injured may take their remedy by action at law, or may preserve their goods or other interest, by opposing lawful force against such unjust violence; provided that it shall be lawful for such fishermen as shall be employed by any inhabitants of this jurisdiction, in the several seasons of the year, to make use of any of our harbours, and such lands as are near adjoining for the drying of their fish or other needful occasions, as also to have such timber and fire wood, as they shall have necessary use of for their fishing seasons where it may be

spared, so as they make due satisfaction for the same to such town or proprietor. [1646.]

Sect. 2. Whereas much damage hath arisen to merchants trading hence, by bad making of fish, and the credit of our trade therein hath much suffered:

Sworn viewers of fish at all fishing places.

It is therefore ordered, that at every fishing place within this jurisdiction, some discreet and honest person be appointed by the county court, unto which such fishing place doth belong, and those persons so nominated and appointed are by this court empowered to give oath unto such persons as shall be chosen by the deliverers and receivers of any fish, who have liberty hereby, either of them, to choose one or more sufficient knowing men in such cases, to view what fish is delivered and received; which viewers shall be sworn as aforesaid, and what they approve of as merchantable, the receiver shall accept, and what is refuse fish shall be cast by, and the said viewers, for their labour and pains aforesaid, shall be allowed one penny per quintal for so much merchantable fish as he or they shall view, to be paid one half by the deliverer, and the other half by the receiver:

And for further direction to the viewers in trial of fish:

It is hereby ordered, that all sun burnt, salt burnt and dry fish, that hath been first pickled, shall be judged unmerchantable. [1652.]

Fishermen's liberty to cut flakes regulated.

Sect. 3. For the explanation of an order bearing date, 1646, and the repealing of the same, 1667, for giving a liberty to fishermen, according to a reservation in the patent, to cut down wood for flakes or stage and other uses about their fishing employ, that it is intended only in that order to give liberty to such as are strangers, and come only to make fishing voyages, and not to fishermen that are inhabitants, who are not to trespass upon any person in their propriety, but are liable to make satisfaction with damages as in any other action of trespass, no way restraining fishermen in common lands, any law, custom or usage to the contrary notwithstanding. [April, 1668.]

No fish to be killed when they go to spawn.

Sect. 4. It is ordered by this court and the authority thereof, that no man shall henceforth kill any codfish, hake, haddock, or pollock, to be dried for sale in the month of December or January, because of their spawning time, nor any mackerel to barrel up in the month of May or June, under penalty of paying five shillings for each quintal of fish, and five shillings for each barrel of mackerel; nor shall any fisherman cast the garbage of the fish they catch overboard at or near the ledges or grounds where they take the fish; nor shall any of the boats' crew refuse or neglect to obey the order of the master of the vessel to which they belong, for the times and seasons of fishing; nor shall they take or drink any more strong liquors than the master

thinks meet to permit them: the breach of these three last being under the penalty of twenty shillings for the first offence; for the second forty shillings; for the third three months imprisonment, one third part of the aforesaid fines to the informer proving the same. [1668.]

Sect. 5. This court being informed, that the taking of mackerel at unseasonable times do greatly diminish their increase, and will in the issue tend to the spoil of the trade thereof:

Do order and enact, that henceforth no mackerel shall be caught, except for spending whilst fresh, before the first of July annually, on penalty of the loss of the same; the one half to the informer, and the other half to the use of the country. And any magistrate or county court is empowered to act herein to all intents and purposes, for the execution of this law.

To prevent damage by unseasonable killing of mackerel.

CHAPTER XLVII.

AN ACT AGAINST FORGERY.

It is ordered by this court and the authority thereof, that if any person shall forge any deed or conveyance, testament, bond, bill, release, acquittance, letter of attorney, or any writing, to pervert equity and justice; he shall stand in the pillory three several lecture days, and render double damages to the party wronged, and also be disabled to give any evidence or verdict to any court or magistrate. [November, 1646.]

CHAPTER XLVIII.

ACTS AGAINST FORNICATION.

Sect. 1. It is ordered by this court, and the authority thereof; that if any man commit fornication with any single woman, they shall be punished, either by enjoining marriage, or fine, or corporal punishment, or all, or any of these, as the judges of the court that hath cognizance of the cause shall appoint. [1642.]

Sect. 2. There being a seeming contradiction between the laws tit. Fornication, and tit. Punishment:

This court doth declare, that the former referring to a particular crime, a shameful sin, much increasing amongst us, to the great dishonour of God, and our profession of his holy name, the punishment of that sin shall be as is prescribed in the said law, any thing that may seem to restrain or limit the same, contained in the other law, tit. Punishment, notwithstanding. And in case any person legally convicted of that or any other shameful and vicious crime, be a freeman; it shall be in the liberty and power of the court that hath the proper cognizance thereof, besides any other penalty or punishment, to add disfranchisement thereto. [1665.]

Sect. 3. Whereas there is a law provided by this court for punishing of fornicators, but nothing as yet for the easing of towns, where bastards are born, in regard of the poverty of the parent or parents of such children sometimes appearing, nor any rule held forth touching the reputed father of a bastard for legal conviction:

It is therefore ordered, and by this court declared, that where any man is legally convicted to be the father of a bastard child, he shall be at the care and charge to maintain and bring up the same, by such assistance of the mother as nature requireth, and as the court from time to time (according to circumstances) shall see meet to order: and in case the father of a bastard, by confession or other manifest proof, upon trial of the case, do not appear to the court's satisfaction, then the man charged by the woman to be the father, she holding constant in it, (especially being put upon the real discovery of the truth of it in the time of her travail) shall be the reputed father, and accordingly be liable to the charge of maintenance as aforesaid (though not to other punishment) notwithstanding his denial, unless the circumstances of the case and pleas be such, on the behalf of the man charged, as that the court that hath the cognizance thereof shall see reason to acquit him, and otherwise dispose of the child and education thereof: Provided always, in case there be no person accused in the time of her travail, it shall not be available to abate the conviction of a reputed father; any law, custom or usage to the contrary notwithstanding.

The reputed father of a bastard to maintain it.

CHAPTER XLIX.

ACTS RELATING TO FREEMEN.

SECT. 1. To the end the body of the freemen may be preserved of honest and good men:

None but church-members to be freemen.

It is ordered, that henceforth no man shall be admitted to the freedom of this commonwealth, but such as are members of some of the churches within the limits of this jurisdiction. [May, 1631.]

SECT. 2. And whereas many members of churches to exempt themselves from publick service, will not come in to be made freemen:

It is ordered, that no members of churches within this jurisdiction, shall be exempt from any publick service they shall be chosen to by the inhabitants of the several towns, as constables, jurors, selectmen, surveyors of the highways; and if any such person shall refuse to serve in, or take upon him any such office, being legally chosen thereunto, he shall pay for every such refusal, such fine as the town shall impose, not exceeding twenty shillings for one offence. [1647.]

SECT. 3. This court having considered of the proposals presented to this court by several of the inhabitants of the county of Middlesex:

Do declare and order, that no man whosoever, shall be admitted to the freedom of this body politick, but such as are members of some church of Christ and in full communion, which they declare to be the true intent of the ancient law, Anno. 1631. [May, 1660.]

SECT. 4. In answer to that part of his majesty's letter of June 28, 1662. concerning admission of freemen:

Admission of freemen.

This court doth declare, that the law prohibiting all persons, except members of churches, and that also for allowance of them in any county court, are hereby repealed.

And do also order and enact, that from henceforth all Englishmen, presenting a certificate under the hands of the ministers or minister of the place where they dwell, that they are orthodox in religion, and not vicious in their lives, and also a certificate under the hands of the selectmen of the place, or of the major part of them, that they are freeholders, and are for their own proper estate (without heads of persons) rateable to the country in a single country rate, after the usual manner of valuation in the place where they live, to the full value of ten shillings, or that they are in full

communion with some church among us; it shall be in the liberty of all and every such person or persons, being twenty-four years of age, householders and settled inhabitants in this jurisdiction, from time to time to present themselves and their desires to this court for their admittance to the freedom of this commonwealth, and shall be allowed the privileges to have such their desire propounded, and put to vote in the general court, for acceptance to the freedom of the body politick, by the suffrage of the major part, according to the rules of our patent. [May, 1665.]

SECT. 5. Forasmuch as several persons who from time to time are to be made freemen live remote, and are not able without great trouble and charge to appear before this court, to take their respective oaths:

County court to give the oath of freedom.

It is therefore ordered, that henceforth it shall be in the power of any county court to administer the oath of freedom to any persons approved of by the general court, who shall desire the same, any law or custom to the contrary notwithstanding. [October, 1664.]

CHAPTER L.

ACTS AGAINST GAMING, DANCING, &c. IN HOUSES OF ENTERTAINMENT.

SECT. 1. UPON complaint of the disorders, by the use of the games of shuffle-board and bowling, in and about houses of common entertainment, whereby much precious time is spent unprofitably, and much waste of wine and beer occasioned:

No gaming in ordinary.

It is ordered by this court and the authority thereof, that no person shall henceforth use the said games of shuffle-board, or bowling, or any other play or game, in or about any such house.

Nor in any other house used as common for such purpose, upon pain for every keeper of such house to forfeit for every such offence twenty shillings, and every person playing at the said game, &c. in or about any such house, shall forfeit for every such offence five shillings.

No gaming for money.

Nor shall any person at any time play or game for any money or money worth, upon penalty of forfeiting treble the value thereof, one half to the party informing, and the other half to the treasury; nor shall any person be an abettor to any kind of gaming on the like penalty.

Nor shall there be any dancing in ordinaries upon any occasion, on the penalty of five shillings for every person that shall offend; and any magistrate may hear and determine any offence against this law. [1646, 47, 51.] No dancing in ordinaries.

Sect. 2. For preventing disorders arising in several places within this jurisdiction, by reason of some still observing such festivals, as were superstitiously kept in other countries, to the great dishonour of God and offence of others:

It is therefore ordered by this court and the authority thereof, that whosoever shall be found observing any such day as christmas or the like, either by forbearing labour, feasting, or any other way upon any such account as aforesaid, every such person so offending, shall pay for every such offence five shillings as a fine to the county. [1651.] Penalty for keeping christmas.

Sect. 3. And whereas not only at such times but several other times also, it is a custom too frequent in many places, to expend time in unlawful games, as cards, dice, &c.

It is therefore further ordered, and by this court declared, that after publication hereof, whosoever shall be found in any place within this jurisdiction, playing either at cards or at dice, contrary to this order, shall pay as a fine to the county the sum of five shillings for every such offence. Penalty for playing at cards and dice.

Sect. 4. Whereas the great sin of gaming increaseth within this jurisdiction, to the great dishonour of God, corrupting of youth, and expending of much precious time and estate: for the preventing of which, and as an addition to the law,

This court doth declare, and be it ordered by the authority thereof, that what person or persons soever shall bring into this jurisdiction any playing cards or dice, or with whomsoever such cards or dice be found in his or their custody, he or they shall pay as a fine the sum of five pounds, the one half to the treasurer, the other half to the informer: but in case any such cards or dice shall come into the custody of any person without his knowledge or consent, he shall carry them to the next magistrate or commissioner within two days after his knowledge of them, to dispose of them as the said magistrate or commissioner shall see cause, any such person shall be free from the penalty. Penalty for gaming.

And if any person that hath played or gamed, and shall give information thereof, he shall be freed from the penalty of the law to pay treble damage, but shall have no further benefit of the law by his information.

And also any such person's testimony shall be good in law, for one testimony, against any that shall break this law.

And it is also declared, that it is and shall be in the liberty of the court of judges that shall determine any such case, to punish the transgressor or transgressors of the law, by imposing the fine, or otherwise by corporal punishment as they shall judge best; any law, usage or custom to the contrary notwithstanding. [May, 1670.]

CHAPTER LI.

ACTS AGAINST HERESY.

SECT. 1. ALTHOUGH no human power be lord over the faith and consciences of men, yet because such as bring in damnable heresies, tending to the subversion of the christian faith, and destruction of the souls of men, ought duly to be restrained from such notorious impieties:

Errors. It is therefore ordered and declared by the court; that if any christian within this jurisdiction, shall go about to subvert and destroy the christian faith and religion, by broaching and maintaining any damnable heresies: as denying the immortality of the soul, or resurrection of the body, or any sin to be repented of in the regenerate, or any evil done by the outward man to be accounted sin, or denying that Christ gave himself a ransom for our sins, or shall affirm that we are not justified by his death and righteousness, but by the perfections of our own works, or shall deny the morality of the fourth commandment, or shall openly condemn or oppose the baptizing of infants, or shall purposely depart the congregation at the administration of that ordinance, or shall deny the ordinance of magistracy, or their lawful authority, to make war, or to punish the outward breaches of the first table, or shall endeavour to seduce others to any of the errors or heresies above mentioned; every such person continuing obstinate therein, after due means of conviction, shall be sentenced to banishment. [1646. 44.]

Anabaptists

Obstinate to be banished.

SECT. 2. The holy scriptures of the old and new testament, being written by the prophets, apostles, and holy men of God, inspired by the Holy Ghost, containing in them the infallible and whole will of God, which he purposed to make known to mankind, both for his own worship and service, and also for the instruction, obedience, faith and salvation of man, which yet by heretieks in former ages, and now of late, have been oppugned and denied so to be, which tends to the overthrow of all true religion, and salvation: for the prevention of so heinous a crime,

It is ordered by this court and the authority thereof; that what person or persons soever, professing the christian religion, above the age of sixteen years, that shall within this jurisdiction, wittingly and willingly, at any time after the publication of this order, deny either by word or writing, any of the books of the old testament, as Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, Samuel, Samuel, Kings, Kings, Chronicles, Chroni-

cles, Ezra, Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, Canticles, Isaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zechariah, Malachi; or new, as Matthew, Mark, Luke, John, Acts, Romans, Corinthians, Corinthians, Galatians, Ephesians, Philippians, Colossians, Thessalonians, Thessalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, and Revelation, to be the written and infallible word of God;

Denying the scriptures to be the word of God.

Or if any person as aforesaid, belonging to this jurisdiction, shall commit the said crime upon the sea, not being or belonging to the jurisdiction of any other commonwealth, shall be forthwith apprehended by the next officer or officers, whether marshal or constable or their deputy, who shall have power so to do by warrant from any one of the magistrates, and shall be committed to the prison at Boston, without bail or mainprise, there to be safely kept till the next county court, where upon sufficient testimony brought against the said delinquent, he shall be adjudged for his offence after legal conviction, to pay such a fine as the court which shall have cognizance of the crime shall judge meet, not exceeding the sum of fifty pounds, or shall be openly and severely whipt by the executioner, whether constable or any other appointed, not exceeding forty strokes, unless he shall publickly recant before his sentence (which if he do) he shall not pay above the fine of ten pounds to the treasurer for the use of the commonwealth, or be whipt in case he pay not the fine. [May, 1652.]

Penalty.

And it is further ordered and enacted, that if the said offender after his recantation, sentence or execution, shall the second time publish, and obstinately, and pertinaciously maintain the said wicked opinion, he shall be banished or put to death as the court shall judge. [1651.]

Muggleton's books to be delivered in to some magistrate,

Sect. 3. It is ordered, that all and every of the inhabitants of this jurisdiction, that have any of the books in their custody, that go under the names of John Reeves, and Lodowick Muggleton (who pretend themselves to be the two last witnesses, and prophets of Jesus Christ) which are full of blasphemies, and shall not bring or send in all such books in their custody to the next magistrate, shall forfeit the sum of ten pounds for every such book found in his hand, the one half to the informer, the other half to the country.

to be burnt.

And as many of the said books, as are, or shall be in custody, shall be burnt in the market place at Boston, on the next lecture day, by the common executioner. [1654.]

Quakers,

Sect. 4. Whereas there is a cursed sect of heretieks lately risen up in the world, which are commonly called quakers, who take upon them to be immediately sent of God, and infallibly assisted by the spirit, to speak and write blasphemous opinions, despising government, and the order of

God in church and commonwealth, speaking evil of dignities, reproaching and reviling magistrates and ministers, seeking to turn the people from the faith, and gain proselytes to their pernicious ways. The court considering the premises, and to prevent the like mischief, as by their means is wrought in our native land:

Not to be brought into this jurisdiction by any master of ship on penalty of one hundred pounds.

Doth hereby order, and by the authority of this court be it ordered and enacted; that no master or commander of any ship, barque, pinnace, ketch, or other vessel, shall henceforth bring into any harbour, creek or cove within this jurisdiction, any known quaker or quakers, or any other blasphemous hereticks as aforesaid, upon the penalty of the forfeiture of one hundred pounds, to be forthwith paid to the treasurer of the country, except it appeareth that such master wanted true notice or information that they were such, and in that case he may clear himself by his oath, when sufficient proof to the contrary is wanting.

And for default of payment of the said fine of one hundred pounds, or good security for the same, such master shall be committed to prison, by warrant from any magistrate, there to continue till the said fine be satisfied to the treasurer as aforesaid.

Masters that bring in quakers must carry them back.

And the master or commander of any such ship or vessel that shall bring them, being legally convicted, shall give in sufficient security to the governor or any one or more of the magistrates, to carry them back to the place whence he brought them, and on his refusal so to do, the governor or the said magistrate or magistrates shall commit such master or commander to prison, there to continue till he shall give in sufficient security to the content of the governor or said magistrates. [October, 1656.]

And if any person or persons within this jurisdiction, shall henceforth entertain and conceal any such quaker or quakers, or other blasphemous hereticks (knowing them to be such) every such person shall forfeit to the country forty shillings for every hour's entertainment and concealment of any quaker or quakers, &c. as aforesaid, and shall be committed to prison as aforesaid, till the fines be fully satisfied and paid. [1657.]

Encouragers of quakers, their penalty.

Sect. 5. And every person or persons, that shall encourage or defend any of their pernicious ways, by speaking, writing or meeting on the Lord's day, or at any other time, shall after due means of conviction incur the penalty ensuing, viz. every person so meeting, shall pay to the use of the country, for every time ten shillings, and every one speaking in such meeting, shall forfeit five pounds. [1658.]

Dispersing quaker's books.

Sect. 6. If any person shall knowingly import into any harbour of this jurisdiction, any quaker's books or writings, concerning their damnable opinions, he shall forfeit for every such book or writing five pounds, and whosoever

shall disperse or conceal any such book or writing, and it be found with him or her, or in his or her house, and shall not immediately deliver the same to the next magistrate, shall forfeit and pay five pounds for dispersing or concealing every such book or writing. Penalty five pounds.

SECT. 7. And every person or persons whatsoever, that shall revile the office or person of magistrates or ministers, as is usual with the quakers, such person or persons shall be severely whipt, or pay the sum of five pounds. Reviling of magistrates or ministers

SECT. 8. And every person that shall publish and maintain any heterodox or erroneous doctrine, shall be liable to be questioned and censured by the county court where he liveth, according to the merit of his offence. [1653.] Publishers of errors.

SECT. 9. Whereas there is a pernicious sect, commonly called quakers, lately arisen, who by word and writing, have published and maintained many dangerous and horrid tenets, and do take upon them to change and alter the received laudable customs of our nation, in giving civil respect to equals, or reverence to superiors, whose actions tend to undermine the authority of civil government, as also to destroy the order of the churches, by denying all established forms of worship, and by withdrawing from the orderly church assemblies, allowed and approved by all orthodox professors of the truth; and instead thereof, and opposition thereunto, frequenting private meetings of their own, insinuating themselves into the minds of the simpler, or such as are less affected to the order and government of the church and commonwealth, whereby divers of our inhabitants have been infected and seduced, notwithstanding all former laws made, (upon experience of their arrogant, bold obtrusions, to disseminate their principles amongst us) prohibiting their coming into this jurisdiction, they have not been deterred from their impetuous attempts to undermine our peace and hasten our ruin:

For prevention thereof, this court doth order and enact, that every person or persons of the cursed sect of the quakers, who is not an inhabitant of, but found within this jurisdiction, shall be apprehended (without warrant, where no magistrate is at hand) by any constable, commissioner or selectman, and conveyed from constable to constable until they come before the next magistrate, who shall commit the said person or persons to close prison, there to remain without bail until the next court of assistants, where they shall have a legal trial by a special jury, and being convicted to be of the sect of the quakers, shall be sentenced to banishment upon pain of death. Quakers to be apprehended. Imprisoned. Banished on pain of death.

And that every inhabitant of this jurisdiction, being convicted to be of the aforesaid sect, either by taking up, publishing and defending the horrid opinions of the quakers, or by stirring up mutiny, sedition or rebellion against the

Qualification of quakers.

government, or by taking up their absurd and destructive practices, viz. denying civil respect and reverence to equals and superiours, withdrawing from our church assemblies, and instead thereof frequenting private meetings of their own, in opposition to church order, or by adhering to, or approving of any known quakers that are opposite to the orthodox received opinions in practices of the godly, and endeavouring to disaffect others to civil government and church order; and condemning the practice and proceedings of this court against the quakers, manifesting thereby compliance with those, whose design is to overthrow the order established in church and commonwealth: every such person upon examination, and legal conviction before the court of assistants in manner as aforesaid, shall be committed to close prison for one month, and then unless they choose voluntarily to depart the jurisdiction, shall give bond for their good abbearance and appearance at the next court of assistants, where continuing obstinate, and refusing to retract and reform the aforesaid opinions and practices, shall be sentenced to banishment upon pain of death: and in case of the aforesaid voluntary departure, not to remain, or again to return into this jurisdiction, without the allowance of the major part of the council first had and published, on penalty of being banished upon pain of death, and any one magistrate, upon information given him of any such person, shall cause them to be apprehended, and if upon examination of the case, he shall according to his best discretion find just ground for such complaint, he shall commit such person to prison, until he comes to his trial as is above expressed. [October, 1658.]

Quakers voluntarily depart, may not return without license.

One magistrate may commit to prison.

Sect. 10. This court being desirous to try all means, with as much lenity as may consist with our safety, to prevent the intrusions of the quakers, who besides their absurd and blasphemous doctrines, do like rogues and vagabonds come in upon us, and have not been restrained by the laws already provided:

Have ordered, that every such vagabond quaker, found within any part of this jurisdiction, shall be apprehended by any person or persons, or by the constable of the town wherein he or she is taken, and by the constable or in his absence, by any other person or persons, conveyed before the next magistrate of that shire wherein they are taken, or commissioner invested with magistratical power: and being by the said magistrate or magistrates, commissioner or commissioners adjudged to be a wandering quaker, viz. one that hath not any dwelling, or orderly allowance as an inhabitant of this jurisdiction, and not giving civil respect by the usual gestures thereof, or by any other way or means manifesting himself to be a quaker, shall by warrant under the hand of the said magistrate or magistrates, commis-

Order against quakers and vagabond rogues.

sioner or commissioners, directed to the constable of the town wherein he or she is taken, or in absence of the constable, to any other meet person, be stripped naked from the middle upwards, and tied to a cart's tail, and whipped through the town, and from thence immediately conveyed to the constable of the next town towards the borders of our jurisdiction, as their warrant shall direct; and so from constable to constable till they be conveyed through any the outwardmost towns of our jurisdiction.

Sect. 11. And if such vagabond quaker shall return again, then to be in like manner apprehended, and conveyed as often as they shall be found within the limits of our jurisdiction; provided every such wandering quaker, having been thrice convicted and sent away as abovesaid, and returning again into this jurisdiction, shall be apprehended, and committed by any magistrate or commissioner as abovesaid unto the house of correction within that county wherein he or she is found, until the next court of that county; where if the court judge not meet to release them, they shall be branded with the letter R. on their left shoulder, and be severely whipt, and sent away in manner as before.

And if after this, he or she shall return again; then to be proceeded against as incorrigible rogues and enemies to the common peace, and shall immediately be apprehended, and committed to the common gaol of the country, and at the next court of assistants shall be brought to their trial, and proceeded against according to the law made anno. 1658. for their punishment on pain of death.

And for such quakers as shall arise from amongst ourselves, they shall be proceeded against as the former law of anno. 1658. doth provide, until they have been convicted by a court of assistants; and being so convicted, he or she shall then be banished this jurisdiction; and if after that they shall be found in any part of this jurisdiction, then he or she so sentenced to banishment, shall be proceeded against as those that are strangers and vagabond quakers, in manner as is above expressed.

And it is further ordered, that whatsoever charge shall arise about apprehending, whipping, conveying, or otherwise about the quakers, to be laid out by the constables of such towns where it is expended, and to be repaid by the treasurer out of the next country levy.

And further, that the constables of the several towns are hereby empowered from time to time, as necessity shall require, to impress cart, oxen, and other assistants for the execution of this order. [1661.]

Sect. 12. This court heretofore, for some reasons inducing, did judge meet to suspend the execution of the laws against quakers, as such, so far as they respect corporal punishment or death, during the court's pleasure. Now forasmuch as new complaints are made to this court of such

persons abounding, especially in the eastern parts, endeavouring to draw away others to that wicked opinion:

Order against vagabond quakers, May, 1621, in force.

It is therefore ordered, that the last law, tit. Vagabond Quakers, May, 1661, be henceforth in force in all respects; provided that their whipping be but through three towns: and the magistrate or commissioners signing such warrant, shall appoint both the towns, and number of stripes in each town to be given. [1662.]

Sect. 13. Though no human power be Lord over all the faith, and conscience of men, and therefore may not constrain them to believe, or profess against their consciences, yet because such as bring in damnable heresies, tending to the subversion of the christian faith, and destruction of the souls of men ought duly to be restrained from such notorious impiety:

It is therefore ordered and decreed by this court, that if any christian within this jurisdiction shall go about to subvert, and destroy the christian faith and religion, by broaching and maintaining any damnable heresy, as denying the immortality of the soul, or the resurrection of the body, or any sin to be repented of in the regenerate, or any evil done by the outward man to be accounted sin, or denying that Christ gave himself a ransom for our sins, or that we are justified by his death and righteousness, but by the perfection of our own works, or denying the morality of the fourth commandment, or any other heresy of such nature and decree, every such person continuing obstinate therein, after due means of conviction, shall pay to the common treasurer during the first six months twenty shillings a month, and for the next six months forty shillings per month, and so to continue during his obstinacy: and if any such person shall endeavour to seduce others to the like heresy and apostacy, from the faith and religion of our Lord Jesus Christ, he shall forfeit to the common treasurer for every several offence therein, five pounds.

CHAPTER LII.

ACTS RESPECTING HIGHWAYS AND PRIVATE WAYS.

Sect. 1. To the end there may be convenient highways for travellers:

It is ordered by the authority of this court, that all country highways shall be such as may be most easy and safe for travellers, to which purpose the court of that county where such highways are to be made and laid out, shall

upon complaint appoint two or three men of each next town, whose inhabitants have most occasion thereof, upon view to lay out such highways according to order, given them by that court, and make return of what they do therein to the next court, provided always it occasion not the pulling down of any man's house, or laying open any garden or orchard, and in common grounds, or where the soil is wet, miry or very rocky, shall lay out such highways the wider, viz. six, eight, ten, or more rods.

Satisfaction to be given proprietor.

Provided, that if any man be thereby damaged in his improved ground, the town shall make him reasonable satisfaction, by estimation of those that laid out the same: and if such persons deputed cannot agree, it shall be referred unto the county court of the shire, who shall have power to hear and determine the case; and if any person find himself justly grieved with any act or thing, done by the persons deputed aforesaid, he may appeal to the county court aforesaid, but if he be found to complain without cause, he shall surely pay all charges of the parties, and court, during that action, and also be fined to the country as the court shall adjudge. [1639.]

Private ways in towns.

Sect. 2. It is ordered and declared by this court, that the select townsmen of every town, have power to lay out (by themselves or others) particular and private ways concerning their own town, only so as no damage be done to any man without due recompense to be given by the judgment of the said selectmen, and one or two chosen by the said selectmen, and one or two chosen by the party, and if any person shall find himself justly grieved, he may appeal to the next county court of that shire, who shall do justice therein as in other cases. [October, 1641.]

Sect. 3. Upon information that divers highways are much annoyed and encumbered by gates and rails erected upon them:

Encumberance in highways to be removed.

It is ordered by the authority of this court; that upon any information or complaint made to any county court, or to any magistrate of any such gates or rails erected, or to be erected upon any common highway, the said court or magistrate shall appoint a committee of discreet and indifferent men to view such encumberance, and to order the reformation thereof.

Sect. 4. And if the parties whom it shall concern, shall not submit to such orders, they shall require them to appear at the next court of that shire, and also shall certify the encumberance found, and order by them made under their hands unto the said court, or appear in person to prosecute the cause, where it shall be heard and determined for ease and convenience of travellers, with due respect to the proprietor's cost and damage, but no person shall stand charged with the repair of common highways through his own ground. [1647.]

CHAPTER LIII.

ACTS RESPECTING IDLE PERSONS.

SECT. 1. WHEREAS in the law tit. House of correction, idle persons are particularly named as such, as the law intended should be committed to that house for correction and reformation: this court taking notice, upon good information and sad complaints, that there are some persons in this jurisdiction, that have families to provide for, who greatly neglect their callings, or mispend what they earn, whereby their families are in much want, and are thereby exposed to suffer, and to need relief from others:

This court for remedy of these great and unsufferable evils; do declare, that by idle persons (mentioned in the recited law) such neglecters of their families, are comprehended amongst the rest, and that in a special manner. [October, 1668.]

SECT. 2. It is ordered, that no person, house-holder or other, shall spend his time idly or unprofitably, under pain of such punishment, as the county court shall think meet to inflict.

Constable to take notice of idle persons.

And the constables of every town are required to use special care to take notice of offenders in this kind, especially of common coasters, unprofitable fowlers, and tobacco takers, and present the same to the next magistrate, who is hereby empowered to hear and determine the cause, or transfer it to the next court. [October, 1633.]

Law for regulating idle persons.

SECT. 3. Whereas there are in sundry of our towns and especially in Boston many idle persons in families as well as other single persons who are greatly if not altogether negligent in their particular callings, and some that do not follow any lawful employment for a livelihood, but mispend their time and the little which they earn to the impoverishing if not utter undoing of themselves and families; for prevention whereof:

It is ordered by this court, and the authority thereof, that the tithingmen in each town shall inspect all such families and persons, and speedily return their names to the selectmen of the town where they dwell, who shall forthwith return to the next magistrates, and if in Boston to any of the magistrates or commissioners there, who are hereby empowered to issue out warrants to the constable of the respective towns to require such person or family to work in or about any employment they are capable of in the town or place where they reside, and if they refuse to be regulated

as aforesaid, then to be sent by said authority to the house of correction, and there receive according to the orders of that house and kept to work:

And that such persons and families may be provided for:

It is ordered that all their clear earnings shall (by said selectmen or their order) be laid out in necessaries suitable for them or their families use and relief, and that their wages shall from time to time be stated by said selectmen, and if any person or persons shall think themselves wronged thereby, they may complain to the county court for relief. [October, 1682.]

CHAPTER LIV.

AN ACT RELATING TO JESUITS.

This court taking into consideration the great wars, combustions and divisions, which are this day in Europe, and that the same are observed to be raised and fomented chiefly by the secret underminings and solicitations of those of the jesuitical order, men brought up and devoted to the religion and court of Rome, which hath occasioned divers states to expel them their territories, for prevention whereof among ourselves:

It is ordered and enacted by authority of this court, that no jesuit, or spiritual or ecclesiastical person (as they are termed) ordained by the authority of the pope or see of Rome, shall henceforth at any time repair to, or come within this jurisdiction: and if any person shall give just cause of suspicion, that he is one of such society or order, he shall be brought before some of the magistrates, and if he cannot free himself of such suspicion, he shall be committed to prison, or bound over to the next court of assistants, to be tried and proceeded with, by banishment or otherwise as the court shall see cause. Forbidden to enter our jurisdiction. To be banished.

And if any person so banished, be taken the second time within this jurisdiction, upon lawful trial and conviction, he shall be put to death. Provided this law shall not extend to any such jesuit, spiritual or ecclesiastical person, as shall be cast upon our shores by shipwreck or other accident, so as he continue no longer than till he may have opportunity of passage for his departure; nor to any such as shall come in company with any messenger hither upon publick occasions, or merchant, or master of any ship belonging to any place, not in enmity with the state of England, or ourselves, so as they depart again with the same messenger, master or merchant, and behave themselves inoffensively during their abode here. [May, 1647.]

CHAPTER LV.

ACTS RESPECTING IMPOST DUTIES.

MANY acts of this kind were passed during the colony government: all the same in principle, but varied in form and practice till they become too voluminous to be printed in this limited edition. The imposts were, at first, small duties on wines and strong waters, and gradually increased in amount, and extended to some new articles, and the custom house officers were empowered to enter into houses or cellars, where they "knew or suspected any wine or strong waters" were, and to seize such wines and strong waters as were not entered according to law; and, by law, they were to be assisted by the constables and others. These laws, also, included a tonnage duty. And by an act passed in April, 1668, a duty was made payable on "all cyder, mum, ale and beer, sold in publick houses licensed to sell such articles. And by a long act passed in 1670, a duty was laid on "all goods, wares, merchandizes, and provisions of all sorts (excepting fish, sheep's wool, cotton wool, salt" and some other things by former laws exempted, &c.) "which, from any foreign part, or other jurisdiction, shall be imported into any of our harbours, ports, shores or elsewhere within this jurisdiction, shall be rated in a just proportion with estates rateable in the country, viz. for every twenty shillings value, shall be paid one penny in money." By a law, passed October, 1680, an impost duty was laid on cattle brought in from the other colonies.

CHAPTER LVI.

ACTS RELATING TO THE IMPRESSMENTS OF LABOURERS, HORSES, &c.

Labourers pressed for any publick work.

SECT. 1. IT is ordered by this court and the authority thereof; that in all publick works of this commonwealth, one magistrate and the overseer of the work, shall have power to send their warrants to the constables of the next towns, to send so many labourers and artificers as the war-

rant shall direct, which the constable and two other or more of the freemen, which he shall choose, shall forthwith execute, for which service, such magistrate and overseer aforesaid, shall have power to give such wages as they shall judge the work to deserve: provided that for any ordinary work, no man shall be compelled to work from home above one week together. [September, 1634.]

Sect. 2. It is also ordered, that no man shall be compelled, to any publick work or service, unless the press be grounded upon some act of the general court, and have reasonable allowance for the same, nor shall any man be compelled in person to any office, work, wars, or other publick service, that is necessarily and sufficiently exempted, by any natural or personal impediment, as by want of years, greatness of years, defect of mind, failing of senses, or impotency of limbs: Persons free for defect.

Nor shall any man be compelled to go out of this jurisdiction upon any offensive wars, which this commonwealth, or any of our friends or confederates, as shall voluntarily undertake, but only upon such vindictive and defensive wars in our own behalf or the behalf of our friends and confederates as shall be enterprised by the counsel and consent of a general court, or by authority derived from the same.

Nor shall any man's cattle or goods of what kind soever be pressed, or taken for any publick use or service, unless it be by warrant, grounded upon some act of the general court; nor without such reasonable prices and hire, as the ordinary rates of the country do afford, and if his cattle or goods shall perish or suffer damage in such service, the owner shall be sufficiently recompensed. [1641.] Cattle and other goods damnified in the country's service to be made good.

Sect. 3. Forasmuch as by sad experience, the country's most weighty and necessary occasions are much neglected and retarded, by reason that in the times of greatest need, few or no horses are to be impressed and gained for the urgent pressing occasions of the country, but such as plead exemption by virtue of their being listed (which this court is tender of discouraging) yet finding it of necessity to take some such course as the country's occasions may be seasonably served, it is therefore ordered, that from henceforth all horses within this jurisdiction (except in the time when they are in the regimental exercises, or in publick service for the country) shall be subject by press to serve the country in their necessary occasions as other horses are; provided that if any horse being listed for service, shall be impressed to be made use of by the country, that then every owner of such horse so listed, shall have allowed him two shillings a day; but if they are not listed, they shall be allowed but one shilling six pence a day; any law, usage or custom to the contrary notwithstanding. Horses to be impressed.

CHAPTER LVII.

AN ACT RESPECTING IMPRISONMENT AND BAIL.

Who bailable.

It is ordered and by this court declared, that no man's person shall be restrained or imprisoned by any authority whatsoever, before the law hath sentenced him thereto, if he can put in sufficient security, bail or mainprise, for his appearance and good behaviour in the mean time, unless it be in crimes capital, and contempt in open court, and in such cases where such express act of court doth allow it. [1641.]

CHAPTER LVIII.

ACTS RESPECTING THE INDIANS.

Sect. 1. For settling the Indians' title to lands in this jurisdiction:

Indians' title to land.

It is declared and ordered by this court and authority thereof, that what lands any of the Indians in this jurisdiction have possessed and improved, by subduing the same, they have just right unto, according to that in Gen. 1. 28. and chap. 9. 1. and Psal. 115. 16.

And for the further encouragement of the hopeful work amongst them, for the civilizing, and helping them forward to christianity; if any of the Indians shall be brought to civility, and shall come among the English to inhabit, in any of their plantations, and shall there live civilly and orderly:

Civil Indians to have land granted them.

That such Indians shall have allotments amongst the English, according to the custom of the English in like case.

Further it is ordered, that if upon good experience, there shall be a competent number of the Indians brought on to civility, so as to be capable of a township, upon their request to the general court, they shall have grants of lands undisposed of, for a plantation as the English have.

Indians not to be dispossessed.

And further it is ordered by this court, that if any plantation or person of the English shall offer injuriously to put any of the Indians from their planting grounds, or fishing-places, upon their complaint and proof thereof, they shall have relief in any of the courts of justice amongst the English, as the English have.

And further it is ordered by this court and the authority thereof, and be it hereby enacted, that all the tract of land within this jurisdiction, whether already granted to any English plantations or persons, or to be granted by this court (not being under the qualification of right to the Indians) is, and shall be accounted the just right of such English as already have, or hereafter shall have grant of lands from this court, and the authority thereof; from that of Genesis 1. 28. and the invitation of the Indians.

None to buy land of Indians.

Sect. 2. And it is ordered, that no person whatsoever, shall henceforth buy land of any Indian without license first had and obtained of the general court, and if any offend herein, such land so bought shall be forfeited to the country.

No arms or ammunition to be traded with the Indians.

Nor shall any person sell, give or barter, directly or indirectly, any gun or guns, powder, bullets, shot, lead, to any Indian whatsoever, or to any person inhabiting out of this jurisdiction: Nor shall any amend or repair any gun belonging to any Indian, nor shall sell any armour or weapons, upon penalty of ten pounds for every gun, armour or weapons so sold, given or bartered, five pounds for every pound of powder, forty shillings for every pound of shot or lead, and proportionably for any greater or lesser quantity. [1633. 37.]

For explanation of the law, tit. Indians:

This court doth declare the prohibition there expressed, referring to the purchase of Indian land without license from this court, is to be understood, as well grants for term of years as for ever, and that under the same penalty, as in the said law is expressed. [1665.]

Sect. 3. Whereas the French and Dutch and other foreign nations do ordinarily trade guns, powder, shot, &c. with Indians, to our great prejudice, and strengthening and animating the Indians against us; and the aforesaid French, Dutch, &c. do prohibit all trade with the Indians within their respective jurisdictions, under penalty of confiscation, &c.

Foreigners prohibited trade with our Indians.

It is therefore ordered; that it shall not be lawful for any Frenchman, Dutchman, or any person of any other foreign nation whatsoever, or any English dwelling amongst them, or under them, or any of them, to trade with any Indian or Indians within the limits of our jurisdiction, directly or indirectly by themselves or others, under penalty of confiscation of all such goods and vessels as shall be found so trading, or the due value thereof, upon just proof of any goods or vessels, so trading or traded.

And it shall be lawful for any person or persons, inhabiting within this jurisdiction, to make seizure of any such goods or vessels trading with the Indians; one half whereof shall be for the proper use and benefit of the party seizing, and the other half to the country. [June, 1650.]

SECT. 4. And because the trade of furs with the Indians in this jurisdiction, doth properly belong to this commonwealth, and not unto particular persons:

None to trade furs with Indians without license under penalty of one hundred pounds.

It is therefore ordered, that henceforth no person or persons, directly or indirectly, shall trade with the Indians for any sort of peltry, excepting only such as are authorized by this court, or by such committee as this court shall appoint from time to time, under the penalty of one hundred pounds fine for every offence, ten pounds whereof shall be to the informer, the rest to the country.

SECT. 5. Whereas several orders for the preventing of drunkenness amongst the Indians have been made, yet notwithstanding there is little or no reformation: For the prevention thereof, and the frequent effects thereof, murder and other outrages amongst them:

Strong liquors prohibited to be sold or given to Indians on penalty of forty shillings per pint.

This court doth order, that no person of what quality or condition soever, shall henceforth sell, truck, barter, or give any strong liquors to any Indian, directly or indirectly, whether known by the name of rum, strong waters, wines, strong beer, brandy, cyder, perry, or any other strong liquors, going under any other name whatsoever; under the penalty of forty shillings for one pint, and so proportionably for greater or lesser quantities so sold, bartered or given, directly or indirectly as abovesaid.

And for the better execution of this order:

All trucking houses erected (not allowed by this court) shall be forthwith demolished.

And for the better effecting of this order:

It is declared that one third part of the penalty shall be granted to the informer.

It is also ordered, that special care shall be had by the grand jury of every shire court, to inquire and present to the court what they find, to discover matter tending to such practice, against the true intent of this law:

And all other orders giving liberty to sell strong liquors to the Indians, are hereby repealed; and all licenses formerly granted, are hereby disabled and called in; provided always, that it is not intended that this law shall extend to restrain any person from any charitable act, in relieving any Indian (bona fide) in case of sudden extremity, by sickness or fainting, which calls for such help, not exceeding one dram, nor when any physician shall prescribe in way of physick any of the particulars before mentioned; so as upon sight of his direction in writing, there be allowance had under the hand of one magistrate, or where no magistrates in the town residing, being under the hands of the town commissioners or two of them. [May, 1657.]

Except in case of sickness, &c.

SECT. 6. This court considering the necessity of restraining the Indians from whatsoever may be a means to disturb our peace and quiet:

Doth order, that henceforth no person or persons inhabiting within this jurisdiction, shall directly or indirectly any way give, sell, barter or otherwise dispose of any boat, skiff, or any greater vessel unto any Indian or Indians whatsoever, under the penalty of fifty pounds, to be paid to the country treasurer, for every such vessel so sold or disposed as aforesaid. [1656.]

No boats to be sold to Indians.

Sect. 7. It is ordered by this court, that in all places within this jurisdiction, the English shall keep their cattle from destroying the Indians' corn, in any ground where they have right to plant, and if any of their corn be destroyed for want of fencing or herding; the town shall make satisfaction, and shall have power among themselves, to lay the charge where the occasion of the damage did arise; provided that the Indians shall make proof, that the cattle of such a town, farm, or person, did the damage.

Damage done to Indians in their corn to be satisfied.

CHAPTER LIX.

ACTS RESPECTING INNKEEPERS, &c.

Sect. 1. Forasmuch as drunkenness is a vice to be abhorred of all nations, especially of those who hold out, and profess the gospel of Christ Jesus, and seeing any strict law will not prevail unless the cause be taken away: it is therefore ordered by this court, first, that no merchant, cooper, nor any other person whatsoever, shall, after the first day of the first month, sell any wine under a quarter cask; neither by quart, gallon, or any other measure, but only such taverners as are licensed by the court to retail wines, or any one whom the court may license to sell per the gallon; and whosoever shall transgress this order, shall pay ten pounds to the treasurer of the country to be levied by distress on his goods and chattels, and where there is no estate found, such delinquents against this order, to be imprisoned during the court's pleasure.

Sect. 2. That no tavern be licensed to sell wine, but shall first pay a fine to the treasurer; and a yearly rent for his said license also.

Sect. 3. That the constable have power from time to time, not only to enter into, and search the taverns for any disorder that may be there found, to punish according to law, either the taverner that suffereth misdemeanour in his house, or any other offenders there; as also to search any

house suspected to sell wines contrary to this order. Also any taverners or other persons that shall inform against any transgressor of this order, shall have half of the fines for his encouragement. This to be of force to the end of the next court of elections, and no longer, except the court shall otherwise order.

Sect. 4. It is ordered and enacted, that no person or persons having license to keep a common house of entertainment, shall suffer any person or persons at unseasonable times to drink, or tipple in their houses upon pain to forfeit, for every time for each person so tippling, five shillings; and it is declared to be unseasonable times, any time after nine of the clock. [September, 1646.]

Drunkards abusing the constable to be committed.

Sect. 5. And if any person be found drunken, by night or by day, or shall in his drunkenness offer any abuse to the constable or others, either by striking or reviling him or them, or using any endeavours by himself or others to make an escape, it shall be in the power of the constable to commit such person or persons to safe keeping or imprisonment, or take bond for his appearance, as he shall see cause; and the keepers of each prison, upon warrant from any magistrate, or commissioner, or selectmen, shall receive all such as shall be so committed, and take but twelve pence for his fee in such cases.

Convented before some magistrate, commissioner or selectmen.

And the constable shall inform the next magistrate thereof, but if no magistrate be in town, he shall convent such person or persons before one or more of the commissioners for ending small causes, and where no commissioners are, before any one or more of the selectmen of the town, who have power given them to do as any one magistrate may do in like case; provided nevertheless, if any such delinquent shall confess his fault, and pay his fine and other charges, the constable shall receive it and dismiss the offender, and every person hereby authorized to receive the fines aforesaid, shall forthwith make return to the treasurer of the county where such offence is committed, of what he hath done and received in such cases.

Travellers entertained for a night.

Sect. 6. It shall be lawful notwithstanding, for all licensed persons to entertain land travellers or sea-faring men in the night season, when they come on shore or from their journey for their necessary refreshment, or when they prepare for their voyage or journey the next day early, so there be no disorder among them, and also strangers, lodgers or other persons in an orderly way, may continue in such houses of common entertainment during meal times, or upon lawful business what time their occasion shall require.

Wine merchants, coopers, &c. not to permit any to be drunk.

Sect. 7. Nor shall any merchant, cooper, owner or keeper of wines, or other persons that have them in their custody, suffer any person to drink to excess or drunkenness in any of their wine cellars, ships or other vessels, or places

where wines do lie on pain to forfeit for each person so doing, ten shillings.

Nor shall any person licensed to sell strong waters, or any private housekeeper permit any person or persons to sit drinking or tippling strong waters, wine or strong beer in their houses. And if any such seller of strong waters or private housekeeper shall be legally convicted before any county court, any one magistrate or commissioners court, such persons shall for the first offence be fined twenty shillings, and if the party so convicted be not able to pay his fine, he shall be set in the stocks, where he shall continue one whole hour, and if any such seller of strong waters shall be convicted as aforesaid of a second offence of the same nature, he shall forfeit his license, and shall also pay twenty shillings as a fine to the country, and if any private housekeeper shall be convicted as aforesaid of a second offence against this law, he shall pay a fine of five pounds, and for a third offence, such person or persons being so convicted, shall be bound to their good behaviour in twenty pounds bond, with two sufficient sureties, or be committed to prison.

Private house-keepers not to permit any to tipple in their houses.

First offence 20s.

Second offence 5l.

Third offence good behaviour.

SECT. 8. And if any person offend in drunkenness, excessive or long drinking the second time, they shall pay double fines.

Drunk the second time double fine.

And if they fall into the same offence the third time, they shall pay treble the fines; and if the parties be not able to pay the fines, then he that is found drunk shall be punished by whipping, to the number of ten stripes; and he that offends in excessive or long drinking, shall be put into the stocks for three hours, when the weather may not hazard his life or limbs.

Third, treble.

And if they offend the fourth time, they shall be imprisoned until they put in two sufficient sureties for their good behaviour.

Fourth time, imprisonment.

SECT. 9. And it is further ordered, that if any person that keepeth or hereafter shall keep a common house of entertainment shall be lawfully convicted the third time, for any offence against this law, he shall (for the space of three years next ensuing the said conviction) be disabled to keep any such house of entertainment, or sell beer, or the like, unless the court aforesaid shall see cause to continue him.

Innkeepers convict of a third offence, forfeit their license.

SECT. 10. It is further ordered, that every innkeeper or victualler shall provide for the entertainment of strangers' horses, viz. one or more inclosures for summer; hay and provender for winter, with convenient stable-room and attendants, under the penalty of two shillings sixpence for every day's default, and double damage to the party thereby wronged, except it be by inevitable accident.

Provision for horses.

SECT. 11. And it is further ordered by the authority aforesaid, that no taverner, seller of wine by retail licensed

Vintners to pay 50s. per butt.

as aforesaid, shall take above nine pounds profit by the butt or pipe of wine, (and proportionably for all other vessels) towards his waste in drawing and otherwise, out of which allowance every such taverner or vintner shall pay fifty shillings by the butt or pipe, and proportionably for all other vessels to the country; for which they shall account with the treasurer or his deputy every six months and discharge the same, all which they may do by selling sixpence a quart in retail (which they shall no time exceed) more than it cost by the butt; besides the benefit of their art and mystery, which they know how to make use of.

To give notice to the treasurer what wine they buy.

And every taverner or vintner shall give a true account and notice unto the treasurer or his deputy of every vessel of wine he buys from time to time within three days, upon pain of forfeiting the same or the value thereof, the one half to the country, the other half to the treasurer and informer.

Treasurer to have 2s. per pound of this impost.

And it is ordered, that the said impost shall from time to time be paid in wines at merchantable price, or other equivalent merchantable good pay, to the content of the treasurer, and that the treasurer shall take special care in collecting the same; who is hereby empowered to substitute such deputies under him as he shall see meet in the several towns for his help and furtherance herein; for all which pains and care, he shall be allowed two shillings in the pound of all such imposts as he shall bring into his annual account with the country.

Provided always, that if any vintner, taverner or retailer of wines, shall give an account to the treasurer of any part of any wine entered as abovesaid, that he hath sold away again by wholesale, being no less in quantity than a quarter cask to one person at one time, and shall truly certify the person who had it, and the time when, such person or persons shall be abated of their impost, in proportion to what they have sold

Sellers of strong water to give notice to the marshal within three days.

And all such as retail strong waters shall in like manner pay two pence upon every quart to the use of the country, who shall also give notice to the marshal general of every case and bottle, or other quantity they buy within three days, upon pain of forfeiture as before.

Ordinary keepers to clear their houses in meeting time.

Sect. 12. And it is ordered, that in all places where week-day lectures are kept, all taverners, victuallers and ordinaries, that are within one mile of the meeting house to which they belong, shall from time to time clear their houses of all persons able to go to meeting, during the time of the exercise, (except upon extraordinary cause, for the necessary refreshing of strangers unexpectedly repairing to them) upon pain of five shillings for every such offence, over and besides the penalties incurred by this law for any other disorder.

SECT. 13. It is also ordered, that all offences against this law may be heard and determined by any one magistrate, who shall hereby have power by warrant to send for, and examine parties and witnesses concerning any of these offences; and upon due conviction either by view of the said magistrate, or affirmation of the constable, and one sufficient witness with circumstances concurring, or two witnesses, or confession of the party, to levy the said several fines, by warrant to the constable for that end. One magistrate to hear and determine all offences against this law.

And if any person shall voluntarily confess his offence against this law in any the particulars thereof, his oath shall be taken in evidence and stand good against any other offending at the same time. Delinquent's testimony.

SECT. 14. It is further ordered by the authority aforesaid, that all constables may, and shall from time to time, duly make search throughout the limits of their towns upon Lord's days and lecture days in times of exercise, and also at all other times so oft as they shall see cause, for all offences and offenders against this law, in any the particulars thereof. Constable to search in ordinaries.

And if upon due information or complaint, of any of their inhabitants or other credible persons, whether taverner, victualler, tabler, or other, they shall refuse or neglect to make search as aforesaid, or shall not to their power perform all other things belonging to their place and office of constable, then upon complaint and due proof before any one magistrate, within three months of such refusal or neglect, they shall be fined for every such offence ten shillings, to be levied by the marshal as in other cases by warrant from such magistrate before whom they are convicted, or warrant from the treasurer upon notice from such magistrate. Constable's neglect. Fined 10s.

SECT. 15. And because it is difficult to order and keep the houses for publick entertainment in conformity to the wholesome laws established, as is necessary for preventing drunkenness, excessive drinking, vain expenses of money, time, and the abuse of the good creatures of God:

It is therefore ordered by this court and the authority thereof, that no person or persons hereafter shall be licensed to keep a house of common entertainment, for any longer than one year at one time, and that such as keep houses of publick entertainment, (the present vintners during their contract excepted) shall and hereby are enjoined once every year, to repair to the several county courts for renewing their several licenses (for which they shall pay two shillings sixpence to the clerk of the court) or else they shall forfeit five pounds as unlicensed ale-house keepers. [1645. 46. 47. 48. 51. 53. 57. 58.] Ordinaries to renew their license yearly.

SECT. 16. Upon complaint of the great abuses that are daily committed by the retailers of strong waters, rum, &c.

both by the stillers thereof, and such as have it from foreign parts:

None to still or retail liquors without license.

This court do therefore order, that henceforth no person or persons shall practise the craft of stilling strong waters, nor shall sell or retail any, by less quantities than a quarter cask, and the same to be delivered not at several times or in several parcels, but at one time, without covin or fraud, excepting only such as shall be allowed annually by the county courts respectively, on penalty of five pounds forfeiture for every time that any person or persons shall be legally convicted thereof; any law, usage or custom, or former licenses to the contrary notwithstanding.

Provided always, this law shall not prohibit such merchants as have strong liquors from foreign parts in cases, from selling the same by the whole case, either to such as are going to sea, or to masters of families of good report. [1661.]

Sect. 17. This court being sensible of the great increase of profaneness among us, especially among the younger sort, taking their opportunity of meeting together in places of publick entertainment, to corrupt one another by their uncivil and wanton carriage, rudely singing and making a noise, to the disturbance of the family and other guests if any be in the house:

Penalty for rude singing in taverns.

This court do therefore order and hereby enact, that no person or persons whatsoever do presume either in word or deed to carry it uncivilly, or wantonly, singing rudely, or making a noise to the disturbance of the family, or any other guests in any place of publick entertainment, on penalty of paying five shillings for every offence against this law, being therefor legally convicted before any court, magistrate or commissioner.

And where sundry persons are in the same company, where any such rude and uncivil carriages are acted, and the particular person or persons unknown, every of the said persons shall be liable to the like penalty, unless they can attest their innocency, and do freely give in their testimony against the nocent.

And if any person allowed to keep a house of publick entertainment shall suffer such carriages by any person or persons, and not legally prosecute the same before authority, on legal conviction thereof, before the county court of whom they had their license, they shall be debarred of any further renewal thereof. [1664.]

Sect. 18. As an addition to the law, tit. innkeepers; it is ordered by this court and the authority thereof, that where any person or persons whatsoever, shall presume to keep a house of publick entertainment, ordinary, cooks' shop, or shall by retail sell wine, strong beer, liquors or cyder, without license first had and orderly obtained; or

having had license, and not renewed as the law requireth, or being discharged for any misdemeanour committed, or suffered to be done in their houses, or in or about the same: It shall be lawful for any court or magistrate, on complaint made to them of such misdemeanour, to send for such person or persons before them, and being legally convicted of any the abovesaid offences, besides the penalty, to require bond, with sufficient sureties for the good abbearance of such person or persons, and in special for their observance of the said law: and in case of refusal to give such bond with sureties as is required; the court or magistrate that hath cognizance of such complaint shall commit such person or persons convicted as abovesaid to prison, until the next court of that county. [1665.]

For prevention of drunkenness.

Sect. 19. Whereas this court hath made several laws and orders for the prevention of the sin of drunkenness, and mispending precious time and estate; and yet notwithstanding great complaint is made of several persons spending their time and estate by drinking and tippling in taverns and ale-houses, to the great dishonour of God, and prejudice of their families; for the prevention whereof:

It is ordered by this court and the authority thereof, that the selectmen of each town shall be, and are hereby required and empowered to take special care and notice of all and every person and persons transgressing as abovesaid, and thereupon to require him or them to forbear the frequenting of such houses or taverns: and if any person shall after such warning given him, be found in any such house of entertainment, and be legally convicted thereof, before any one magistrate or commissioner, he shall forfeit five shillings, to be paid to the treasurer of that town for every such offence, or sit in stocks as the judges shall see meet.

And it is further ordered, that the selectmen shall also give notice to the keepers of such publick houses, that they suffer no such noted person in any of their houses, upon the penalty of twenty shillings for every such defect, to be paid to the treasurer as aforesaid. [1670.]

An addition to the law, tit. innkeepers.

Sect. 20. It is ordered by this court and the authority thereof, that for the future the selectmen of all towns shall approve of all persons to be licensed before license be granted to any of them by the county court to keep such publick house, or be a retailer of strong liquors in any of the said towns, and all persons shall annually renew their license at the spring court in their respective counties.

Sect. 21. Before any license be granted, the grand jury shall bring in their presentments, and in case any licensed person shall be presented or prosecuted by the selectmen or any other for transgressing the law referring to such persons, and be legally convicted, beside the penalty which the law appoints as a punishment for their misdemeanour, their

license shall not be renewed until the fine be paid, and upon a second conviction they shall forfeit their license.

SECT. 22. It is hereby declared lawful for any of the county courts to punish the transgressors of this law by fine, imprisonment, or corporal punishment not exceeding ten stripes for the first offence. [February, 1680.]

CHAPTER LX.

ACTS RESPECTING JUDGMENTS AND EXECUTIONS.

SECT. 1. WHEREAS there is a great abuse in selling of judgments and executions, and so altering the property of them before they be satisfied, or goods seized, whereby great inconvenience may arise, as experience hath proved:

Judgments and executions not to be sold.

This court doth therefore order, that after the end of this session, no person shall sell, alienate or assign any judgment or execution whatsoever, and if any shall presume to act contrary to this order, his sale, assignment or alienation shall be void in law; and in case the party die, after the judgment, before he hath taken out an execution, or before satisfaction be received, his executor or his administrator shall take out or renew the execution, as the party deceased might have done.

County court to renew executions in case, &c.

SECT. 2. Whereas, in the levying of executions, there have fallen out many difficulties whereby the judgments obtained have been made frustrate, for the prevention whereof the court doth order and declare, where any execution shall be levied on any houses, lands, and goods, and delivered to the parties for whom the judgment was granted, and the said execution returned according to law, if it shall appear the persons whose lands, goods, or houses were levied by execution, have affirmed or delivered or tendered the said goods, lands, or houses as his own which in reality were not his own proper estate, and in the same condition of estate as he did tender them either to the officer or parties for whom the execution is levied, such person, so endeavouring by such action to delude the law and defraud the creditor, shall be liable to pay double damages to the party grieved and pay such fines as the county court shall see cause to impose.

And if any party that hath obtained an execution, shall adventure to levy the same upon lands, houses, or goods,

commonly accounted the houses, lands, or goods of the person against whom the judgment was granted, and the execution be returned according to law; if it afterwards appear the said houses, lands, or goods of the said parties, against whom the judgment was given, the party that was so mistaken making the same to appear to the court that granted the judgment, the said court shall order a new execution for the satisfying of the judgment notwithstanding the former execution returned. [May, 1674.]

Directions to clerks, secretaries and marshals, about executions, levying, and recording.

SECT. 3. For the better direction and regulating of all clerks, secretaries, marshals and constables, in reference to the granting and serving of executions, it is hereby ordered and enacted by this court, that all executions shall be made according to the words of the judgment, without addition or substraction, and that the officer that grants the same, keep upon record the day, month, and year when it was granted, and that all marshals and constables take care to see them recorded, and in case of houses or lands taken upon execution, it concerns the person or persons to whom they are delivered to see it duly recorded; which being done, shall be a legal assurance of such houses and lands to him and his heirs for ever. [1675.]

Order regulating servitude by execution.

SECT. 4. For the prevention of deceit and cozenage by persons being taken by execution, or delivering themselves over as servants unto any, thereby to prevent their creditors taking hold on them, it is ordered and enacted by this court and the authority thereof, that henceforth no person or persons shall be taken or delivered over by execution, or shall deliver up themselves to any one or more of their creditors in way of service for satisfaction of any debt or debts owing by him or them, unless it be with the knowledge and approbation of the court of that county where such debtor or creditor dwell, that they may receive satisfaction in the justness of the debt, and likewise set the time that the debtor shall serve, and that it may be publickly declared that he is a servant, provided this order shall not be interpreted so as to obstruct the legal proceedure of any other creditor against any person so disposed to service, either formerly or hereafter. [1683.]

Execution may be served by the marshal general.

SECT. 5. It is hereby ordered that it shall and may be lawful for the clerks or recorders of any and every county court of this colony to direct any execution by them drawn to the marshal general as well as to the marshals of the county, so that the person who shall obtain a judgment and take out execution, may employ which of them he shall see meet, provided always when any such execution shall be delivered to the marshal general, the cost of it shall not be greater than if it had been served by the marshal of the county, where the judgment was granted. [October, 1684.]

CHAPTER LXI.

ACTS RESPECTING JURIES AND JURORS.

Clerk to grant warrant for jurors.

Chosen by the freemen.

Constables to return the warrant.

Juries at special courts allowed 4s. per diem.

Jury to find according to evidence.

Bench to determine matter of equity.

Grand juries.

Jurors not bound to reveal secrets.

SECT. 1. IT is ordered by this court and the authority thereof; that the secretary or clerk of every court shall, in convenient time before the sitting of the court, send warrants to the constables of the several towns of the jurisdiction of that court, for jurymen proportionable to the inhabitants of each town: and the constable upon the receipt of such warrant, shall give timely notice to the freemen of their respective towns, to choose so many able, discreet men as the warrant shall require, which men, so chosen, he shall warn to attend the court whereto they are appointed, and shall make return of the warrant unto the clerk aforesaid.

The like order shall be observed in the choice and summoning juries to attend special courts:

At which court every juryman shall be allowed four shillings per diem for their charges, and to be paid by him upon whose motion the court was granted.

And all juries serving at the court of assistants at Boston, shall be summoned respectively out of the counties of Suffolk and Middlesex: and all jurors so chosen shall be empanneled and sworn truly to try between party and party, and shall find the matter of fact with the damages and costs, according to their evidence, and the judges shall declare the sentence, or direct the jury to find according to law; and if there be matter of apparent equity, as the forfeiture of an obligation, breach of covenant without damage, or the like, the bench shall determine such matters of equity.

And no trial shall pass upon any man for life or banishment in any inferiour court, but by a special jury summoned for that purpose.

SECT. 2. It is also ordered, that there shall be grand juries summoned in like manner every year unto the several courts in each jurisdiction, to present all misdemeanours they shall know or hear, to be committed by any person within the jurisdiction, and to do any other service of the commonwealth, they shall be required by the said court.

Provided no juror, nor any person whatsoever shall be bound to inform, present or reveal any private crime or offence, wherein there is no peril or danger to this colony, or any member thereof, when any necessary tie of conscience binds him to secrecy, unless it be in testimonies lawfully required.

And every grand juror shall be allowed three shillings per diem for his charges, out of the fees and other profits arising in each court where they do service, or by the county, if those incomes fall short. Juror's allowance.

Sect. 3. In all cases wherein the law is obscure, so as the jury cannot be satisfied therein, whether it be grand or petty jury, they have liberty to present a special verdict, viz. if the law be so in such a point we find for the plaintiff, but if the law be otherwise we find for the defendant, in which case the determination doth properly belong to the court. Jury's liberty to give a special verdict.

And all jurors shall have liberty in matter of fact, if they cannot find the main issue, yet to find and present in their verdict so much as they can.

Sect. 4. And if the court and jury shall so differ at any time about their verdict, that either of them cannot proceed with peace of conscience, the case shall be issued and determined at the next court of assistants, in manner following, (i. e.) the attachment with the security for appearance at the county court, shall be continued to the court of assistants; and if the plaintiff shall see cause further to prosecute his action, he shall give summons to the defendant as the law provideth, and shall also take out of the records of the county court the records of the said case with the evidences presented by both parties, and bring the same to the court of assistants, where after the case is presented, as it was at the county court, both parties shall have liberty to make any new pleas or evidence before the bench and jury; and in case the plaintiff shall not further prosecute his action in manner as is hereby provided, the defendant shall then have judgment granted him for his costs, at the next court of that county. Court and jury not agreed, case comes to the general court.

Sect. 5. It is further ordered, that whensoever any jury or jurors are not clear in their judgments or conscience, concerning any case wherein they are to give their verdict, they shall have liberty in open court (but not otherwise) to advise with any man they shall think fit to resolve or direct them, before they give in their verdict. Jury's liberty to take advice in open court.

And no juror shall be compelled to serve above one ordinary court in a year, except grand jurors, who shall hold two courts together at the least, and such as shall be summoned to serve in cases of life and death, or banishment. [1634, 41, 42, 49, 50, 51, 53, 56, 57.] Jurors to serve but a year, except.

Sect. 6. Whereas in suits and actions brought into courts between party and party, sometimes the plaintiff and sometimes the defendant, and sometimes neither of them do attend to answer when they are called to prosecute or answer, which hath been too long connived at by the magistrates, and much time lost in sending to seek them out, or wait their coming in, whereby the country charges increased,

and the magistrates, jurors, witnesses and others abused, contrary to the laudable, reasonable practice and customs of all courts in our native country, and other countries known unto us:

Plaintiff and defendant's penalty for not answ. at their call.

It is therefore hereby ordered and enacted, that if any plaintiff, he or she, have entered any action to be tried in any court, or which comes orderly into any court, by replevin, appeal, or by the disagreement between the magistrates and jury in an inferiour court, and do not by him or herself, or by their attorneys make their appearance and prosecute their action immediately after they have been three times called in the court by name, after the first forenoon of the court; that then they shall be non-suited; and if plaintiff or defendant appear upon such call, they shall have their costs granted by the court against him or her that doth not appear; and if afterwards both parties do agree to try their case at the same court, they shall be allowed so to do, the plaintiff paying half so much for a new entry as he did before.

Plaintiff's liberty to make new entry in case.

Delinq. penalty for not answering when called.

And if any person presented by the grand jury for any offence, or summoned by a magistrate to answer any crime, do not upon summons appear at the time appointed, upon the third call as aforesaid, he or she shall be proceeded against for contempt, except he or she be restrained or prevented by the hand of God.

Law relating to trials in civil causes in inferiour courts.

Sect. 7. This court being desirous to prevent all dissatisfaction and inconveniences that may arise in the trial of civil cases in inferiour courts, sometimes happening by reason of disagreement between the bench and jury, formerly allowed by law; do order and enact that henceforth in all county courts, after that the bench have used all reasonable endeavours for clearing the case to the jury by declaring the law, and comparing the matter of fact proved therewith, the verdict of the jury finally given shall be accepted and judgment accordingly entered; and in like manner shall the proceeding be in the court of assistants, unless upon apparent corruption, or error in the jury, giving in their verdict contrary to law or evidence, the party cast shall in open court attaint the jury, and give sufficient bond and sureties within twelve hours after the verdict is accepted, to prosecute the said jury at the next court of assistants in an action of attaint; in which case execution shall be respited, and the clerk of that court shall summon a jury of twenty-four able and discreet men, chosen as the law directs, to attend the service of the court, where the said action of attaint shall be tried in the first place; and if, on trial of the case, there shall be found manifest error or mistake, the party complaining shall be repaired his full damage from the other party to the original suit; and if, by the said jury of twenty-four, there be found bribery, conspiracy or other corruption in the jury attainted, they shall be punish-

ed by fine, or imprisonment, proportionable to the degree of their offence; and if otherwise, the twenty-four jurors shall acquit the former jurors accused, they shall be allowed double costs from the party accusing; and their verdict and the judgment of the former court shall stand good and execution shall be issued forth accordingly; and that clause in the law allowing the magistrates not to concur with or refuse the verdict of the jury is hereby repealed. [May, 1672.]

Sect. 8. Whereas it is found by experience that the provision made by the law, tit. Juries, May 1672, for relief in case of apparent corruption or error in the jury's giving in their verdict contrary to law and evidence, is perverted, to the burdening of the country with unreasonable troubles, the great wrong of parties concerned, with unjust reflections made thereby upon the juries:

It is ordered by this court and the authority thereof, that in all attaints, before the entry or allowance thereof, the party attainting shall give in writing under his hand, for what cause, and shew how the same doth appear so to be; and in case upon a due trial as the law provides, the verdict of the former jury be confirmed, such person so attainting shall pay to the country, as a fine for unnecessary trouble to the court, ten pounds in money, and to the jurymen that gave in the former verdict forty shillings apiece. And in case it be for corruption, it shall be lawful for the jury so reproached jointly or severally to prosecute their action of slander as to them shall seem meet, and the plaintiff reproaching shall also be liable to such further fine to the country as the court shall judge meet. Also in all cases where the former verdict is confirmed, the party concerned shall have double costs and also double interest, for being detained of his just debt according to former verdict. [September, 1684.]

CHAPTER LXII.

ACTS RESPECTING LANDS NOT SUBJECT TO FEUDAL BURDENS.

Sect. 1. It is ordered, and by this court declared, that all our lands and heritages shall be free from all fines and licenses, upon alienations, and from all heriots, wardships, liveries, primerseizins, year, day and waste, escheats and

County courts to empower heirs, &c. to make deeds.

forfeitures upon the death of parents or ancestors, natural, unnatural, casual or judicial, and that for ever. [1641.]

Sect. 2. It is hereby ordered and enacted, that it shall be lawful, and in the power of the county court where the land lies (the bargain being legally proved to the satisfaction of the court) to empower the next heir, or executor, or administrator to the estate, to draw or sign deeds of sale for the same. [1682.]

CHAPTER LXIII.

ACTS RESPECTING LIBERTIES IN COMMON, AS TO FLATS, &c. TO PASS OVER LANDS, AND TO REMOVE OUT OF THE COLONY.

Liberty at publick assemblies.

Sect. 1. It is ordered, by this court decreed and declared; that every man, whether inhabitant or foreigner, free or not free, shall have liberty to come to any publick court, council, or town meeting, and either by speech or writing, to move any lawful, seasonable, or material question, or to present any necessary motion, complaint, petition, bill, or information, whereof that meeting hath proper cognizance, so it be done in convenient time, due order, and respective manner. [1641.]

Fishing and fowling.

Sect. 2. Every inhabitant who is an householder shall have free fishing and fowling in any great ponds, bays, coves and rivers, so far as the sea ebbs and flows within the precincts of the town where they dwell, unless the freemen of the same town or the general court have otherwise appropriated them:

Provided, that no town shall appropriate to any particular person or persons, any great pond, containing more than ten acres of land, and that no man shall come upon another's propriety without their leave, otherwise than as hereafter expressed.

The which clearly to determine;

Sect. 3. It is declared, that in all creeks, coves, and other places about and upon salt water, where the sea ebbs and flows, the proprietor, or the land adjoining, shall have propriety to the low water mark, where the sea doth not ebb above a hundred rods, and not more wheresoever it ebbs further:

Provided, that such proprietor shall not by this liberty have power to stop or hinder the passage of boats or other

vessels, in or through any sea, creeks or coves, to other men's houses or lands.

Liberty to pass through propriety to fish and fowl.

Sect. 4. And for great ponds lying in common, though within the bounds of some town, it shall be free for any man to fish and fowl there, and may pass and repass on foot through any man's propriety for that end, so they trespass not upon any man's corn or meadow. [1641. 47.]

Liberty to remove out of the jurisdiction.

Sect. 5. Every man of, or within this jurisdiction, shall have free liberty (notwithstanding any civil power) to remove both himself and his family, at their pleasure, out of the same; provided there be no legal impediment to the contrary. [1641.]

CHAPTER LXIV.

AN ACT AS TO LYING AND SPREADING FALSE NEWS.

Sect. 1. Whereas truth in words, as well as in actions, is required of all men, especially of Christians, who are the professed servants of the God of truth; and whereas all lying is contrary to truth, and some sort of lies are not only sinful, (as all lies are) but also pernicious to the publick weal, and injurious to particular persons:

Age of discretion fourteen years.

It is therefore ordered by this court and authority thereof, that every person of the age of discretion (which is accounted fourteen years) who shall wittingly and willingly make, or publish any lie, which may be pernicious to the publick weal, or tending to the damage or injury of any particular person, or with intent to deceive and abuse the people with false news and reports, and the same duly proved in any court, or before any one magistrate (who hath hereby power granted to hear and determine all offences against this law) such person shall be fined for the first offence ten shillings, or if the party be unable to pay the same, then to be set in the stocks, so long as the said court or magistrate shall appoint, in some open place, not exceeding two hours.

First offence 10s. or stocks.

Second offence 20s. or whipt.

For the second offence in that kind, whereof any shall be legally convicted, shall pay the sum of twenty shillings, or be whipped upon the naked body, not exceeding ten stripes.

Third offence.

And for the third offence forty shillings, or if the party be unable to pay, then to be whipped with more stripes, not exceeding fifteen.

Fourth offence.

And if yet any shall offend in like kind, and be legally convicted thereof, such person, male or female, shall be fined ten shillings a time more than formerly, or if the party so offending be unable to pay, then to be whipt with five or six more stripes than formerly, not exceeding forty at any time.

The aforesaid fines shall be levied, or stripes inflicted either by the marshal of that jurisdiction, or constable of the town where the offence is committed, according as the court or magistrate shall direct.

And such fines so levied shall be paid to the treasury of the shire where the cause is tried.

Liberty to appeal.

If causeless, doubly fined.

SECT. 2. And if any person shall find himself grieved with the sentence of any such magistrate out of court, he may appeal to the next court of the same shire, giving sufficient security to prosecute his appeal, and abide the order of the court, and if the said court shall judge his appeal causeless, he shall be double fined, and pay the charges of the court during his action, or corrected by whipping as aforesaid, not exceeding forty stripes, and pay the costs of the court, and party complaining or informing, and of the witnesses in the case.

Under age to be corrected by parents.

SECT. 3. And for all such as being under age of discretion, that shall offend in lying contrary to this order, their parents or masters shall give them due correction, and that in the presence of some officer, if any magistrate shall so appoint; provided always, that no person shall be barred of his just action of slander, or otherwise, by any proceeding upon this order. [May, 1645.]

CHAPTER LXV.

AN ACT AGAINST MANSLAUGHTER.

A man may kill in his own defence.

IT is ordered by this court and the authority thereof; that if any person in the just and necessary defence of his life, or the life of any other, shall kill any person attempting to rob or murther in the field or highway, or to break into any dwelling house, if he conceive he cannot with safety of his own person otherwise take the felon or assailant, or bring him to trial, he shall be holden blameless. [1647.]

CHAPTER LXVI.

ACTS RESPECTING MARRIAGES AND MARRIED PERSONS.

SECT. 1. IT is ordered by this court and authority thereof, that no man shall strike his wife, nor any woman her husband, on penalty of such fine, not exceeding ten pounds for one offence, or such corporal punishment as the county court shall determine. [October, 1650.]

SECT. 2. For prevention of all unlawful marriages: It is ordered, that henceforth no person shall be joined in marriage, before the intention of the parties proceeding therein hath been three times published, at some time of publick lecture or town meeting, in both the towns where the parties or either of them do ordinarily reside, or be set up in writing upon some post of their meeting house door in publick view, there to stand so as it may easily be read, by the space of fourteen days. [1639.]

Three times published.

or posted fourteen days.

SECT. 3. And whereas God hath committed the care and power into the hands of parents for the disposing their children in marriage, so that it is against rule to seek to draw away the affections of young maidens, under pretence of purpose of marriage, before their parents have given way and allowance in that respect; and whereas it is a common practice in divers places for young men irregularly and disorderly to watch all advantages for their evil purposes, to insinuate into the affections of young maidens, by coming to them in places and seasons unknown to their parents for such ends, whereby much evil hath grown amongst us, to the dishonour of God, and damage of parties; for prevention whereof for time to come:

It is further ordered, that whatsoever person from henceforth shall endeavour, directly or indirectly, to draw away the affection of any maid in this jurisdiction, under pretence of marriage, before he hath obtained liberty and allowance from her parents or governors or, in absence of such, of the nearest magistrate, he shall forfeit for the first offence five pounds, for the second towards the party ten pounds, and be bound to forbear any further attempt and proceedings in that unlawful design, without or against the allowance aforesaid; and for the third offence upon information or complaint by such parents or governors to any magistrate, giving bond to prosecute the party, he shall be committed to prison, and upon hearing and conviction by the next court, shall be adjudged to continue in prison, until the court of assistants shall see cause to release him. [May, 1647.]

No motion of marriage to be made to any maid without consent of parents.

Penalty 5l.

SECT. 4. Whereas divers persons, both men and women, living within this jurisdiction, whose wives and husbands are in England, or elsewhere, by means whereof, they live under great temptations here, and some of them committing lewdness and filthiness here amongst us, others make love to women and attempt marriage, and some have attained it, and some of them live under suspicion of uncleanness, and all to the great dishonour of God, reproach of religion, commonwealth and churches;

Married persons to go to their relations on pain of 20l.

It is therefore ordered by this court and authority thereof, for the prevention of all such future evils, that all such married persons as aforesaid, shall repair to their said relations by the first opportunity of shipping, upon the pain or penalty of twenty pounds, except they can shew just cause to the contrary to the next county court, or court of assistants,

Constable to present such to court.

after they are summoned by the constable there to appear, who are hereby required so to do, upon pain of twenty shillings for every such default wittingly made:

Provided this order do not extend to such as are come over to make way for their families, or are in a transient way only for traffick or merchandize for some small time. [May, 1647.]

SECT. 5. As the ordinance of marriage is honourable amongst all, so should it be accordingly solemnized:

Who may solemnize marriage.

It is therefore ordered by this court and authority thereof, that no person whatsoever in this jurisdiction shall join any persons together in marriage, but the magistrate, or such other as the general court, or court of assistants shall authorize in such place, where no magistrate is near.

Nor shall any join themselves in marriage, but before some magistrate or person authorized as aforesaid.

Not before publication.

Nor shall any magistrate or other person authorized as aforesaid, join any persons together in marriage, or suffer them to join together in marriage in their presence, before the parties to be married have been published according to law. [1646.]

SECT. 6. In answer to the question, whether it be lawful for a man that hath buried his first wife, to marry with her that was his first wife's natural sister? The court resolves it on the negative. [May, 1670.]

Three commissioners power to marry.

SECT. 7. It is ordered by this court, and the authority thereof, that from henceforth any one of the three commissioners for ending small causes in the several towns where no magistrate dwells shall and hereby are authorized and empowered to solemnize marriage between parties legally published, provided two of the said commissioners be present; and all other commissions in this case are hereby made void. [May, 1656.]

CHAPTER LXVII.

ACTS RESPECTING MARSHALS, THEIR POWERS AND DUTIES.

SECT. 1. IT is ordered by this court and authority thereof, that every marshal shall diligently and faithfully collect and levy all such fines and sums of money, of every person for which he shall have warrant from the respective treasurers, or other authority, which he shall return to the said treasurer with all convenient speed, upon penalty of forfeiting two shillings out of his own estate, for every pound not collected or returned as aforesaid, or such fine as any court shall impose upon him for his neglect. Marshal to levy all fines.

SECT. 2. And every marshal shall with all speed and faithfulness levy the goods of every person for which he shall have warrant, by virtue of any execution granted and signed by the secretary, or other clerk authorized thereunto; and the said goods so levied shall, with all convenient speed, deliver to the party or attorney that obtained the judgment and execution, or be liable to make full satisfaction to the party for all damage sustained by his neglect. To serve all executions.

And the said marshal shall, within two months after the receipt of any such execution, make return of the said execution, with what he hath done by virtue thereof under his hand to the clerk that granted the same, to be by him kept and recorded; and if the execution be not fully satisfied, the said clerk shall, at the request of the party, grant execution for the remainder: To return execution to the clerk.

And every marshal neglecting to make return of executions as aforesaid, shall forfeit double the damage any person concerned therein may sustain by such neglect.

SECT. 3. Further the said marshals shall with like care and faithfulness, serve all attachments directed to them, and return the same to the courts to which they are returnable at the times of the returns thereof, and henceforth no marshal shall be clerk or recorder of any court. Marshal not to be clerk.

SECT. 4. And it is hereby ordered, that the marshal's fees shall be twelve pence in the pound, to be paid by the respective treasurers, for all fines levied by the said marshals, and returned to the said treasurers, and for serving attachments within one mile, one shilling three pence, to be paid by the party that employs them; and for serving executions twelve pence in the pound, for all sums not exceeding ten pounds; and for all sums above ten pounds, and not exceeding forty pounds, six pence in the pound more; and for all sums above forty pounds, and not exceeding one Marshal's fees.

hundred pounds, three pence in the pound more; and one penny in the pound more for all sums above one hundred pounds, out of the estate of the person the execution is served upon, over and above for the execution.

And in all cases, where the aforesaid fees for levying executions or fines will not answer the marshal's travel, and other necessary charges, the marshal or other officer employed shall have power to demand six pence per mile, and upon refusal, to levy the same together with his other fees.

Marshal general's fees.

SECT. 5. And it is ordered, that all marshals and constables within this jurisdiction shall henceforth, from time to time, allow and pay unto the marshal general three pence out of every fifteen pence they receive for serving attachments; also three pence out of every shilling due to them, for levying of fines and executions.

And it is further ordered, that the said marshal general shall from time to time have and enjoy to his own use and benefit the custom of two pence per quart upon all such as do, or shall retail strong waters; and all such as shall sell under one gallon at a time shall be accounted retailers, whether licensed or not; and the one half of the fine of five pounds of all such persons as shall upon his information or complaint be convicted to have sold strong waters without license; as also the sole benefit of the impost of all strong waters brought into the country, which this court doth allow as a meet encouragement and salary for the service of the said marshal general.

SECT. 6. Whereas the marshals and their deputies have often need of assistants in the execution of their office:

Marshal may require aid as the constable may.

It is ordered that they and every of them have and shall have the same power to enjoin and charge any person to aid them and assist them therein as every constable hath; and whoever shall refuse, or not yield obedience thereto, shall incur the like penalty that those do or should do, that refuse to aid the constable in his office. [June, 1650.]

Officer may break open doors or chests.

SECT. 7. And upon cases of fines and assessments to be levied, and upon execution in civil actions, the marshal or other officer shall demand the same of the party at his house or place of usual abode, and upon refusal or non-payment, he shall have power (calling assistance if he see cause) to break open the door of any house, chest, or place where he shall have notice that any goods liable to such levy or execution shall be; and if he be to take the person, he may do the like, if upon demand he shall refuse to render himself.

Necessary charges to be levied.

SECT. 8. And whatever charges the officer shall necessarily be put unto, upon any such occasion, he shall have power to levy the same as he doth the debt, fine or execution; and where the officer shall levy any such goods upon

execution, as cannot be conveyed to the place where the party dwells, for whom such execution shall be levied, without considerable charge, he shall levy the said charge also with the execution.

The like order shall be observed in levying of fines: provided, it shall not be lawful for such officer to levy any man's necessary bedding, apparel, tools, or arms, neither implements of household, which are for the necessary upholding of his life; but in such cases, he shall levy his land or person according to law, and in no case shall the officer be put to seek out any man's estate further than his place of abode; but if the party will not discover his goods or lands, the officer may take his person. Goods exempt from execution.

Sect. 9. And it is ordered, that if any officer shall do injury to any by colour of his office, in these or any other cases, he shall be liable upon complaint of the party wronged, by action or information, to make full restitution. [1647.] Officer doing wrong to make satisfaction.

CHAPTER LXVIII.

ACTS RESPECTING MASTERS, SERVANTS AND LABOURERS.

Sect. 1. It is ordered by this court and the authority thereof, that no servant, either man or maid, shall either give, sell or truck any commodity whatsoever without license from their masters, during the time of their service, under pain of fine, or corporal punishment, at the discretion of the court as the offence shall deserve. Servants not to give or truck.

Sect. 2. And that all workmen shall work the whole day, allowing convenient time for food and rest. Work the whole day.

Sect. 3. It is also ordered, that when any servants shall run from their masters, or any other inhabitants shall privily go away with suspicion of evil intentions, it shall be lawful for the next magistrate or the constable and two of the chief inhabitants where no magistrate is, to press men and boats or pinnaces at the publick charge, to pursue such persons by sea and land, and bring them back by force of arms. Servants run away to be pursued.

Sect. 4. It is also ordered by the authority aforesaid; that the freemen of every town may from time to time, as occasion shall require, agree amongst themselves about the prices and rates of all workmen's labour, and servants' wages. And every person inhabiting in any town, whether workman, labourer or servant, shall be bound to the same Wages to be set by the freemen in towns

rates, which the said freemen, or the greater part, shall bind themselves unto; and whosoever shall exceed those rates, so agreed, shall be punished by the discretion of the court of that shire, according to the quality and measure of the offence; and if any town shall have any cause of complaint against the freemen of any other town, for allowing greater rates or wages than themselves, the county court of that shire shall from time to time set order therein.

SECT. 5. And for servants and workmen's wages:

Wages to be paid in corn.

It is ordered, that they may be paid in corn, to be valued by two indifferent freemen chosen, the one by the master, the other by the servant or workman, who also are to have respect to the value of the work or service; and if they cannot agree, then a third man shall be chosen by the next magistrate, or if no magistrate be in the town, then by the next constable, unless the parties agree the price themselves; provided, if any servant or workman agree for any particular payment, then to be paid in specie, or consideration for default therein; and for all other payments in corn, if the parties cannot agree, they shall choose two indifferent men, and if they cannot agree, then a third as before.

To be valued.

Servants flying cruelty of masters may be harboured.

SECT. 6. It is ordered, and by this court declared; that if any servant shall flee from the tyranny and cruelty of his or her master to the house of any freeman of the same town, they shall be there protected and sustained till due order be taken for their relief; provided due notice thereof be speedily given to their master from whom they fled, and to the next magistrate or constable where the party so fled is harboured.

Servants not put off without allowance of two magistrates.

SECT. 7. Also that no servant shall be put off for above a year to any other, neither in the life time of their master, nor after their death by their executors or administrators, unless it be by consent of authority assembled in some court, or two assistants, or otherwise all, and every such assignment to be void in law.

Servants maimed to be discharged.

SECT. 8. And if any man smite out the eye or tooth of his man servant or maid servant, or otherwise maim or much disfigure them (unless it be by mere casualty) he shall let them go free from his service, and shall allow such further recompense as the court shall adjudge him.

Faithful servants rewarded, unfaithful punished.

SECT. 9. And all servants that have served diligently and faithfully, to the benefit of their masters, seven years, shall not be sent away empty; and if any have been unfaithful, negligent or unprofitable in their service, notwithstanding the good usage of their masters, they shall not be dismissed, till they have made satisfaction according to the judgment of authority. [1630. 33. 35. 36. 41.]

CHAPTER LXIX.

ACTS RELATIVE TO MILLERS.

It is ordered by this court and the authority thereof, that no miller shall take above one sixteenth part of the corn he grinds; and that every miller shall have always ready in his mill weights and scales, provided at his own charge, to weigh corn to and from mill if men desire it. [1635. 38.]

Miller's toll.

To have weights.

CHAPTER LXX.

ACTS RESPECTING THE MILITARY.

Sect. 1. Forasmuch as the well ordering of the militia is a matter of great concernment to the safety and welfare of this commonwealth:

It is ordered by this court and the authority thereof; that the military forces of Suffolk, Middlesex and Essex, shall be under the command of the serjeant majors chosen in each county; and that the militia of Norfolk shall be commanded by the major of the regiment of Essex, provided the said militia be not drawn out of the said county to any regimental exercise: and if any of the said majors be removed or discharged their places, the major general for the time being shall, within one month at furthest after such change, send forth his warrant to each town in the shire, to make choice of a major in manner following, viz. The freemen, householders, and such soldiers as have taken the oath of fidelity, before the fifteenth of May, [1656.] and no other, being met together in their respective towns (by virtue of such warrant from the major general, or from the general court) shall give in their votes for such a person as they judge fit for the office of serjeant major of that regiment, which votes shall be sealed up by the chief military officer of the place, or by the constable (as the warrant shall direct,) and sent by some freeman, chosen by the town, to carry them to the shire town of that county, at such time as the warrant shall direct, where the said votes shall be opened and numbered in the presence of one or two of

Militia commanded by majors.

Majors how and by whom chosen.

the nearest magistrates and the said freemen, and he that shall have the greater number of votes, being a freeman, shall be presented by one of the said magistrates unto the major general, within one week after such election, who shall by giving the oath accustomed, and delivering him a commission, install and confirm such serjeant major in his place.

Regimental meetings once in three years.

SECT. 2. And every serjeant major is hereby ordered and required, once in three years, to draw his regiment, both horse and foot, in one convenient place in the county, and to instruct and exercise the officers and soldiers in military discipline, according to his best skill and ability; for which service he shall have twenty pounds allowed him out of the treasury of the country for his pains and charges, for every such meeting: also every serjeant major may as often as he shall see cause send his warrants to require the chief officer of each company in his regiment to meet at such time and place as he shall appoint, and there with them to confer, and give in command such orders as shall by them be judged meet for the better ordering and settling the particular companies in military exercises; and to impose fines and penalties upon such delinquents as have not given satisfaction to their captain or chief officer, for all defects either in their arms, ammunition, appearances, watches, offences, &c.

Meeting of the officers of the regiment.

And the serjeant major shall, with the consent of the said officers, give order to the clerks of the several companies, to take distress for the same within one month after such order.

SECT. 3. And for the settling particular military officers in every town of this jurisdiction:

Nomination of officers of companies.

It is ordered, that every freeman, householder and listed soldier, having taken the oath of fidelity as abovesaid, and no other, shall have liberty to give his vote for the nomination of military officers of that town or company where he dwells, provided they be freemen; and all persons so nominated shall be presented to the court of that county, to be allowed and confirmed in their respective offices, unless the said court shall see cause to the contrary; and no person shall be acknowledged or accepted as an officer of any company without the allowance and approbation of the county court first had and obtained.

To be allowed by the county courts.

SECT. 4. And in every town where there is sixty-four soldiers liable to attend constant training, besides the officers, such number of soldiers shall be accounted a foot company, and have liberty of nomination of all the officers of a foot company, and shall have two drums.

Sixty-four soldiers to be a company.

And in smaller towns, where there shall be a less number than sixty-four as aforesaid, they shall have liberty of nomination of serjeants, and other inferiour officers, only to teach and instruct them in the exercise of arms.

And the major of the regiment shall have power to order and regulate the smaller towns, and to join them into one complete company, as occasion may require, which shall have liberty of choice of all officers as aforesaid. And every captain, lieutenant and ensign, shall have commission from the general court, for the holding of their places, and exercise of their duties.

Captain, lieutenant, ensign to have commissions.

Sect. 5. The said military officers of every company shall take care that their soldiers be well and completely armed, and shall appoint what arms every soldier shall serve with; provided two thirds of each company be musketeers, and those which serve with pikes have corslets and head pieces: and they shall exercise their soldiers six days every year, when the captain or chief officer shall appoint, by giving publick warning thereof, three or four days before the day of exercise; provided, that so many days as shall be expended by order of the major of the regiment, in the exercise of the regiment, and in marching to and from the place of exercise, shall be accounted as part of their six days.

Captain to appoint the soldier arms.

To exercise six days yearly.

Sect. 6. Also, the three chief officers of each company shall have power to punish such soldiers, as shall commit any disorder or contempt upon any day or time of military exercise, or upon any watch or ward, by stocks, bilboes, or any other usual military punishment, or by fine, not exceeding twenty shillings, or may commit such offender to the constable, to be carried before some magistrate, who may bind him over to the next court of that shire, if the cause so require, or commit him to prison.

Three chief officers to punish disorders of soldiers.

Sect. 7. Every foot soldier shall be completely armed and furnished, the pikeman with a good pike well headed, corslet, head piece, sword and knapsack; the musketeers with a good fixed musket, not under bastard musket bore, nor under three feet nine inches in length, nor above four feet three inches long, with a priming wire, worm, scourer, and mould, fitted to the bore of his musket; also with a good sword, rest, bandeleers, one pound of powder, twenty bullets, and two fathoms of match, upon the penalty of ten shillings for every defect; and all other inhabitants of this jurisdiction, except magistrates and elders of churches, the president, fellows, and students of Harvard College, shall always be provided of arms, and furnished as aforesaid, under the penalty aforesaid.

Soldiers how to be armed.

On penalty of 10s.

And other inhabitants.

Sect. 8. And if any person cannot procure arms or ammunition with such means as he hath, if he shall bring to the clerk so much corn as by appraisement of the said clerk and two other indifferent men, whereof one to be chosen by the party, shall be adjudged of greater value by a fifth part than such arms or ammunition is of, he shall be excused of the penalty for want of arms until he be provided; and the

Wanting arms, to carry pay to clerk to provide.

clerk shall endeavour to furnish him so soon as may be by sale of such goods so deposited, rendering the party the overplus.

Poor, how to be furnished with arms.

But if any person shall not be able to provide himself arms and ammunition, through mere poverty, if he be single, he shall be put to service by some magistrate, or the constable shall provide him arms and ammunition, and shall appoint him when and with whom to earn it out.

Persons exempt from training.

Sect. 9. Every person above the age of sixteen years shall duly attend all military exercise and service, as training, watching, warding, under the penalty of five shillings for every fault, except magistrates, deputies and officers of court, elders and deacons, the president, fellows, students and officers of Harvard College, and professed schoolmasters, physicians and chirurgeons allowed by two magistrates, treasurers, surveyor general, publick notary, masters of ships and other vessels above twenty tons, fishermen constantly employed at all fishing seasons, constant herdsmen, and such other as, for bodily infirmity or other just cause, shall by any county court, or court of assistants (after notice of the party's desire to the chief officer of the company to which he belongs) be discharged; also one servant of every magistrate and teaching elder, and the sons and servants of the major general for the time being, also such as dwell at remote farms, or have a ferry to pass, shall be exempt from watching in the town, but shall watch and ward as their chief officer shall direct otherwise; and all farms distant above four miles from the place of exercising the company, or have a ferry to pass over, that have above twenty acres of land in tillage, and twenty head of great cattle upon such farm, shall upon reasonable allowance to the company, have one man exempted from ordinary trainings.

Clerk of the band

Sect. 10. And it is ordered, that in every town or company there shall be chosen (as other military officers are chosen) a discreet able man to be clerk of the band, and if any shall refuse to accept the place, or to take his oath, he shall pay to the use of the company forty shillings, and the company shall choose another; and all that refuse the place or oath as aforesaid, shall pay forty shillings a piece, till one doth accept the place, and he that doth hold the place, shall have a fourth part of the fines for his labour. And the clerk shall upon every training day twice, once in the forenoon, as also in the afternoon, at such time as the captain or chief officer then in the field shall appoint, call or cause to be called over, the lists of the names of all the soldiers, and shall give attendance in the field all the day (except he have leave from his captain or chief officer) to take notice of any defect by absence of soldiers or other offences that may fall out in time of exercise.

To call a roll and attend on training days.

And the said clerk shall twice every year view all arms and ammunition of the company, and take notice that every soldier be furnished according to this law; to which end, by direction of the chief officer, he shall give notice to the soldiers, that upon such a training day appointed, they are required to bring (in the forenoon) all their arms and ammunition into the field, where they shall be approved or disallowed by the judgment of the said chief officer then in the field; and further the said clerk shall once in the year at least, survey the arms of all other inhabitants, and see that all (except as before excepted) be provided in their houses with arms and ammunition, and upon every occasion, he is required to use all diligence to view every man's arms, whether they be completely furnished with all arms and ammunition as the law requireth. To view the arms.

And the said clerk shall within one week after any default made, or defect observed, present a list of the names of all that are delinquent, and of their defects to the captain or chief officer of the company: and shall without partiality demand and receive all fines due for such defects, according to this law; which if any shall refuse to pay, he shall make distress upon the goods of such persons, as shall not within ten days after their default be discharged, or have their fines mitigated by the captain or chief officer of the company, unless the said chief officer shall see cause to refer the judgment and determination of such default to the major and chief officer of the regiment at their meeting. Give notice to the captain of all defects. To distrain within ten days.

And the clerk shall with the advice of the chief officers of the company, speedily lay out all fines received or levied, in ensign, drums, halberts, candles and wood for the watch, or provide powder and arms for the poorer sort, or otherwise as in their discretion they shall judge meet, for the use of the company. To dispose of fines for the use of the company.

Sect. 11. And for the better ordering the militia in the several towns, in cases of any sudden exigent:

It is ordered, that there be a committee of militia in every town, and that the committee of militia in Boston, shall consist of the magistrates living in the town, the chief officer of the horse, if living in town, and the chief officer of each company of foot, or the greatest part of them, and in sudden exigents, any three of them may act when due means being used a greater number cannot be assembled; which committee shall have a commission, who shall also have power to appoint a military watch, when they shall see cause, for the safety of the town and country; and Charlestown, Salem and Ipswich shall have the like committee of militia, who shall have like power by commission: and for all other towns where there is one or more magistrates, the said magistrate or magistrates, with the three chief military officers; and where no magistrate dwells, the deputy or Committee of militia in the several towns. Their power.

deputies of the general court, with the three chief officers of such town, or any three of them, shall be the committee of militia for such town, and have power in all sudden exigents to order and dispose the militia of their town, for their own safety and defence, till further order be taken, and upon alarm, or any invasion, to strengthen their quarters, and to hinder any approaching or assailing them in a way of hostility, by bearing arms in companies, or refusing upon such approaches to come under command, or give an account what they are, and wherefore they are in such posture.

In case of alarm, to give notice to the major.

And every such committee, where any such alarm shall be given or received, or shall be assaulted as aforesaid, is required with all possible speed to give intelligence to the next magistrate, and the major of the regiment where such alarm is taken, or assault made of the reason thereof, and state of the place so assailed.

Major to order assistance. To give intelligence to the council and major general.

And the said major is hereby required to send forth to procure intelligence of the estate of any place so alarmed or assaulted, and to order assistance to them from any other company or companies of his regiment, as the case shall require, and shall give constant intelligence to the governor or council of the country, and major general of the state of such affairs with all convenient speed.

Major not to lead his regiment out of the county.

But no major of any regiment shall march with his regiment out of the county wherein he hath command, nor cause any part thereof so to do without order from the general court, council of the commonwealth, or major general, except it be in pursuit of the enemy upon a rout.

Seniority of captains.

And in case of death or absence of the major, upon any such occasion of service, the eldest captain of the regiment shall supply his place till further order be taken; and the seniority of all captains and chief officers of every company in the several regiments, shall be accounted according to the seniority of the towns or companies they command, except the commanders of the four companies of Boston, being of equal standing, the seniority of the captains shall be according to the priority of their commissions.

Committee to press soldiers.

It is further ordered, that henceforth all warrants for impressing and raising of soldiers, for any expedition, shall be directed to the committee of militia of the several towns, who may execute the same by the constable, and the said committee are hereby empowered and required to suppress all raising of soldiers, but such as shall be by the authority of this government.

To take care of great guns. And repair forts.

And in all towns where there are great artillery, forts or batteries, the committee of militia, and selectmen of the town, shall mount such guns, and fit them with appurtenances for service, and repair such forts or batteries as they shall see necessary for the security of the town, the charge

whereof the selectmen are hereby empowered and required to levy on the estate of the inhabitants, according to the proportion of the country rate, to be collected by the constables of the said town, for the use aforsaid.

Committee of militia.

Whereas in the law tit. Military, sect. 11. the three chief military officers in each town except Boston, together with the magistrates or deputies thereof are appointed a committee of militia for such towns, without mentioning the officers of the horse, to be of that committee.

This court doth declare, that the commission officers of the horse in the town where they dwell shall be added thereto, and hereby are appointed and empowered to be of the committee of militia for such towns where they dwell; any law or custom to the contrary notwithstanding. [1664.]

Military watches how set.

Sect. 12. It is ordered, that the military watches shall be set by beat of drum half an hour after sun set, by the military officers, in such places as they shall judge most convenient, and shall be ordered and disposed by their command and direction; and if any man shall shoot off a gun after the watch is set, except in case of alarm, he shall forfeit forty shillings.

Instruction and duty of sentinels.

The said watch or sentinels being set shall examine all persons that shall come within their watch or round, and all they suspect they shall carry to their guard, there to be kept till morning, and before they be dismissed, they shall carry them to their chief officer to be examined and proceeded with according to law.

And if the sentinel or watch shall meet with such persons as shall be too strong for them, or by their carriage shall give just cause of suspicion, or will not submit to their command, or if they shall either draw upon them, or offer any such affront in words or actions, as shall put them in fear or hazard of their lives, they shall discharge upon them, and retire with speed to the guard and raise an alarm; provided always, that in time of peace, when the council of war, or the chief officers of the company shall not apprehend present danger by the nearness of an enemy, it shall not be in the liberty of any sentinel to hazard the killing of any person, except in his own necessary defence; but if the cause require it, he shall retire to the guard, and raise an alarm by discharging his musket and crying arm, arm, which shall be taken for an alarm by the soldiers of that town; and if there appear danger to the chief officer, he shall either strengthen his guard, or give a general alarm, which shall be either the distinct discharge of three muskets, or the continued beat of the drum, or firing a beacon, or the discharge of a piece of ordnance and two muskets after it, any of which in the night shall be accounted a general alarm, which every soldier is immediately to answer, by repairing armed to his colours or court of guard, upon the penalty of five pounds.

What shall be taken for an alarm.

Not answering the alarm, penalty 5*l*

Smiths to repair arms.

Sect. 13. And upon any expedition, upon occasion of any enemy, or any present military service to be done, all smiths and other needful workmen, shall immediately repair such arms and other necessaries as shall be brought unto them for that end, for which they shall not refuse such pay as the country affords, upon the penalty of five pounds for every such default, and for such neglect at any other time, more than ten days, shall forfeit for every such offence ten shillings.

Penalty.

Sect. 14. The surveyor general shall yearly give an account of the common stock of powder and ammunition to the council, that the general court, being by them informed, may out of the publick treasury make a constant supply according to the need of the country.

Sect. 15. Every town shall be provided of a sufficient watch house, under the penalty of five pounds, and shall also provide at their own charges a safe and convenient place to keep all such powder and ammunition in, as the chief military officer by order of the general court shall appoint, under the penalty of ten pounds.

Towns to provide watch house and stock of powder and ammunition.

And the selectmen of every town shall provide, for every fifty soldiers, one barrel of good powder containing near one hundred pounds, one hundred and fifty pounds of musket bullets, and eight and twenty pounds of good match, and after that proportion for every company of soldiers, in number more or less; which they shall carefully renew from time to time as shall be needful, under the penalty of five pounds for the want of every barrel of powder, one hundred and fifty pounds of bullets and eight and twenty pounds of match as before mentioned, and the selectmen of every town as aforesaid, are hereby authorized to assess their inhabitants for making the provisions aforesaid, which shall remain as a town stock, besides all other provisions of that kind. [1649.]

Troop not exceed 70 to be under major's command.

Sect. 16. It is ordered by this court and the authority thereof; that no troop of horse within this jurisdiction shall exceed the number of seventy listed soldiers besides officers; and that the troops raised in the several counties be under the command of the majors of the regiment in the respective counties, and all privileges formerly granted to encourage troopers shall be continued, except free ferriage, and free commonage in divided and appropriate commons: And every troop consisting of forty shall have liberty of nomination of all officers, to be allowed and confirmed by the county courts as the foot officers, and the three chief officers to have commissions.

Troopers how to be furnished.

And every trooper shall keep always a good horse, and be well fitted with saddle, bridle, holsters, pistols or carbines and swords, under the penalty of ten shillings for every defect, and having listed his horse, shall not change or put

him off without license from his captain or chief officer under the like penalty.

And every trooper shall attend six days' exercise yearly, at such time and place as shall be appointed by the chief officer, under the penalty of five shillings for every default, to be levied and distrained by the clerk of the troop, who is hereby required to execute the place as the clerks of the foot companies mutatis mutandis. To exercise six days yearly.

Sect. 17. And because the troopers living remote do often avoid their penalties, or occasion much travel and charge to the clerk to collect the same:

It is ordered that the clerks of the troops, for their charge and travel in levying all fines, shall be allowed the fees of the marshal, to be by him levied and distrained together with the fines; provided no such distress be made within one month after the default, that the parties may have liberty to present their excuses to the officers, who have power, upon just cause, to abate or remit the fines, as the officers of the foot have in like cases. Clerk's fees.

And in case of alarm, every trooper shall fit himself in all respects for service, and shall speedily repair to the guard in the town where he dwells, under the penalty of five pounds, and shall duly attend such service as the committee of militia of that town shall require, until he shall otherwise be commanded by order from his captain or other superiour officer: and no officer of any foot company shall be a listed trooper. And no troop shall be drawn out of the county upon any pretence by the captain and officers thereof, except in pursuit of an enemy upon a rout, but by order of the major general. And the captains of horse and of foot respectively, the majors of the regiments, and the major general, are required in their respective charges, to take care the military orders respecting foot and horses be duly executed and observed. [1645. 47. 48. 52. 53. 54. 55. 56.] How troops are disposed in case of alarm. No troop to be drawn out of the county.

Also it is ordered, that no trooper put off or change his horse without leave from his commander, under the penalty of five pounds; and that for non-appearance on days of exercise, the fine shall be ten shillings; and that no trooper being listed may at his pleasure disband himself without leave orderly obtained from his commander, and returned by certificate to the commander of the foot in the town to which they belong, under the penalty of such a fine as his chief officer shall impose, not exceeding fifty shillings. Troopers' penalty.

Sect. 18. For a more full and clear understanding of the intent of this court in reference to commissions granted to military officers:

It is ordered and hereby declared, that all commissions of inferiour officers be, and do stand good and in force, notwithstanding the death or removal of their superiour officers. Officers' commissions.

It is also further ordered, that all trained soldiers, whether horse or foot, shall repair to their several quarters and lodge their arms, immediately after their dismission upon training days: And whosoever shall either singly or in companies remain in arms, and vainly spend their time and powder by inordinate shooting in the day or night after their release, such soldiers upon conviction shall be punished by their superiour officer's order, upon the next training day at the head of the company, by sharp admonition, or otherwise, with any usual military punishment, at the discretion of the chief officer; provided the magistrate have not taken notice of the matter before.

Disorder in soldiers to be punished by the officers.

Sect. 19. It is also further ordered; that all soldiers, whether horse or foot, who shall disobey the lawful commands of their superiour officers upon any training day, either in time of exercise in the body, or otherwise refusing to perform any service which their officers in their discretion shall judge expedient, in order to the furtherance and promoting military work, such refractory soldiers shall be punished either by admonition or otherwise, at the head of the company, with any usual military punishments, at the discretion of the chief officers.

Sect. 20. It is also further ordered, and be it hereby enacted, that the law limiting troops not to exceed seventy persons in a troop, as also for allowance of five shillings per annum, is hereby repealed, in reference to any that shall be listed after the publication of this order.

And that henceforth none shall be admitted to be a listed trooper, but such whom themselves or parents under whose government they are, do pay in a single country rate for one hundred pounds estate, and in other respects qualified as the law provides: and the same certified under the hand of the constable of the town where they live. [1663.]

Sect. 21. Forasmuch as complaints have been made to this court of very great inequality in keeping and maintaining of military watches, the burden of that service lying mainly, if not altogether, upon such as bear arms, when several persons of good estate are free; all which considered:

Military watches.

It is ordered, that henceforth all persons whatsoever, within this jurisdiction, who are liable to serve in constables' watches, shall also be liable to the like service in all military watches, either in their own persons, or by a sufficient supply to be made by all such persons as aforesaid, or shall pay twelve pence in money, and that under the penalty of five shillings for every such neglect, to be levied by the clerk of each company, by warrant under the hand of the chief officer of the same. [1664.]

Sect. 22. Whereas this court hath already provided for the well ordering and settling the militia of this common-

wealth, as in the law tit. Military, yet forasmuch as many complaints are presented to this court, that the said orders are not so attended as is to be desired; considering the present juncture of affairs between our English nation and foreign enemies, who are now engaged in a bloody war, which calls for a prudential endeavour of our own safety against any foreign invasion or sudden surprisal:

Major general and major's power to see that all the arms of the country be readily fixed.

This court doth therefore order and enact, that the said military laws be by all persons therein mentioned forthwith attended in all respects; and for the better effecting the same, the major general is required forthwith, by warrant under his hand to the majors of the several regiments, to require them to make diligent inquiry into the state of the several companies under their charge, and to be certified under the hands of the commission officers, or chief officers where no commission officers are of each company, of all defects of arms, ammunition, or otherwise in every respect; and the said majors respectively are required to give speedy advice to the major general what posture their said regiments are in, and wherein the said majors cannot of themselves forthwith make redress of any defects in the said companies, the said majors with the advice of the major general have hereby power to use all lawful means to effect the same.

And all inferiour officers are hereby required to yield ready obedience to all such warrants sent to them by the said majors respectively, or major general, upon the penalty of five pounds for every such defect, to be levied by distress by such person as the said major general and majors of the regiments shall depute, which said fines shall be for a stock of powder for the said company where the defects arise from time to time.

5l. penalty for defects of inferiour officers.

Fines go to procure stock of powder for the company.

Sect. 23. And whereas several towns in this jurisdiction are not under the command of any serjeant major, as Dover, Portsmouth, &c. as also the towns of the county of Hampshire:

It is ordered, that the major general take care for regulating of the military affairs of such towns, till they are brought under a major, as in other counties; and all military officers of such places are required obedience to the orders of the major general from time to time, upon the penalty above mentioned for every defect. [May, 1666.]

Towns not under majors of regiments to be regulated and ordered by the major general.

Sect. 24. Whereas the law, tit. Military, sect. 7. requires every pikeman to be completely furnished (amongst other weapons, with a sufficient corslet) this court considering that corslets are wanting to many soldiers in several companies, and that supplies therein are not easily to be attained:

It is therefore now ordered, and by the authority of this court enacted; that every pikeman within this jurisdiction

Pikemen to provide buff coats or quilted coats.

shall be completely furnished, either with a sufficient corslet, buff coat or quilted coat, such as shall be allowed by the chief officer, under whose command they from time to time shall serve, upon the penalty in the recited law already expressed; any law, custom or usage to the contrary notwithstanding. [October, 1666.]

SECT. 25. This court considering the direction of our patent, relating to the stating of all military officers in this jurisdiction:

How officers are to be chosen.

Do hereby order and declare, that all commission officers that at present are in power are confirmed according to their respective commissions; but for the time to come, where new are to be chosen, it is only in the power of the general court, or in case of emergency, for the council of the commonwealth, to nominate, choose, appoint, and empower all commission military officers, excepting the major general, and admiral by sea, the choice of whom is otherwise provided for by law; and for all inferiour officers in companies, they are to be chosen and appointed by the commission officers of that company, and where no commission officer is, by the major of the regiment. [1668.]

SECT. 26. The court considering that the regiments are multiplied from three to six since the law was made, requiring the sergeant majors of every regiment to draw forth his regiment once in three years, to exercise them in military discipline:

Regimental meetings.

Do order, that henceforth the regimental meetings shall be in this following order, i. e.

Suffolk, this present year, 1671.

Norfolk, including the county of Portsmouth and Dover, 1672.

Middlesex, anno 1673.

Yorkshire, anno 1674.

Essex, anno 1675.

Hampshire, anno 1676.

And so to be continued in this order successively, from time to time.

And the majors of Norfolk, Yorkshire and Hampshire are allowed towards their expenses and entertainment, occasioned by that service, ten pounds apiece respectively for the time of that service, to be paid by their respective county treasurers.

SECT. 27. And it is also ordered, that henceforth the allowance of twenty pounds apiece granted formerly to the majors of the three old regiments, shall be paid by the county treasurers respectively, for such their service, any thing contrary hereunto contained in the military law, sect. 2. notwithstanding. [1671.]

SECT. 28. This court taking into their serious consideration the weight and necessity that lieth on them, to see that

all soldiers, especially at such a season as this, should be fitted with arms, and well skilled to use them; and because the welfare of each military troop and foot company, both in their being provided with, and knowledge of their use of arms, lieth very much in the clerk of each company's careful and faithful observation and execution of his office, in the seasonable and due levying of such fines as are by law due for defects, the neglect whereof too sad experience sheweth hath done very great hurt in many companies, for preventing such inconveniences for the future:

Soldiers' fines to be gathered by the clerk of troops or foot companies within a month or to be levied on themselves.

This court doth order, that what fines shall be due according to law from any soldier for defect, in either arms or trainings, which the clerk or clerks of the said troop or company shall not levy and gather into his hands, within one month after the training day on which the said defect is made, it shall be in the power of the captain or chief officer of that troop or foot company, to send the marshal or constable with an execution, and levy the said fines upon the estate of any such clerk or clerks so defective, unless the said clerk can make it appear to the captain, that he or they have been hindered either by sickness or the absence of the person delinquent being out of town.

And it is further ordered; that the clerk or clerks of every military troop or company shall once in six months render a particular account to the captain or chief officer, of all such fines as are levied by the said clerk, that the same may be disposed of for the good of the company according to law. [May, 1672.]

Further allowance to Boston, Charlestown, Salem and Marblehead for fortification.

Sect. 29. This court considering our own state as to fortification, how that our forts and artillery belonging to the country, both in this town of Boston, Charlestown, Salem and Marblehead do need much to repair them, that they may be fit for service, if God should call thereunto:

Do therefore order; that each of the towns abovementioned shall be allowed what they are rated to the country rate for this next year, for and towards the finishing and repairing the several forts there, and that each of their rates be committed into the hands of the committee of militia in each of the aforesaid towns, by them speedily to be improved for the use abovesaid.

Soldiers' neglect of arms and training with their contempt of officers how punished.

Sect. 30. Whereas divers soldiers, who by law are commanded to attend military exercise upon training days in the towns where they live, not having any visible estate whereon the clerk of the company unto which they do belong can levy the fine due by law, when they are delinquent either in arms or trainings, do often neglect the duty in both keeping arms and trainings, and do thereupon carry it boldly and provokingly to the clerk and other officers; for prevention whereof:

It is ordered by this court and the authority thereof; that it shall be in the power of the commission officers of each company, or such of them as are present at the next training day after such offence is committed, to punish such person offending as abovesaid, who hath not satisfied the clerk according to law, by any military punishment according to the aggravation of the crime, by either riding the wooden horse, or by bilboes, or tyeing neck and heels, or acknowledgment at the head of the company, or any punishment according to military discipline, at the discretion of the commission officer or officers present.

And in case any such delinquent shall absent himself from training two days together, that then it shall be in the power of the chief officers, and they are hereby enjoined by warrant directed to the constable of that town, to convent such offender before him, and to proceed with him as in this order is provided, and all constables are hereby ordered to attend their duty herein. [May, 1672.]

Order about masters of small vessels training, &c.

Sect. 31. For explanation of the law, tit. Military, in exemption of ships and other vessels above twenty tons from training, it is hereby declared, that it is only intended in that order the exemption of such masters as trade and pass to foreign ports, and not those whose employ of their vessels is in these parts, and near where they live upon these coasts.

Order for nomination of military officers.

Whereas the allowing and appointing of all commission military officers in this jurisdiction belongs properly and only to this court by law both peaceful and satisfactory, and inasmuch as this court may not be acquainted with many useful and fit persons for that service: It is therefore hereby ordered, that henceforth it shall and may be lawful for the committee of militia, in the several towns where there shall be need, to present the names of two or three meet persons in their towns for such service and office to this court, for their approbation or otherwise as this court shall see cause. [1675.]

CHAPTER LXXI.

AN ACT AGAINST MONOPOLIES.

It is ordered, decreed, and by this court declared, that there shall be no monopolies granted or allowed amongst us, but of such new inventions that are profitable to the country, and that for a short time. [1641.]

CHAPTER LXXII.

ACTS RESPECTING OATHS AND SUBSCRIPTIONS.

SECT. 1. IT is ordered, and by this court declared, that no man shall be urged to take any oath, or subscribe to any articles, covenants or remonstrances of publick and civil nature, but such as the general court hath considered, allowed and required; and no oath of any magistrate or of any officer shall bind him any further or longer than he is resident or reputed an inhabitant of this jurisdiction. [1641.]

No oaths but what are imposed by the general court.

Officer's oath, how long binding.

SECT. 2. Forasmuch as divers inhabitants of this jurisdiction, who have long continued amongst us, receiving protection from this government, have as we are informed uttered offensive speeches, whereby their fidelity to this government may justly be suspected, and also that divers strangers of foreign parts do repair to us of whose fidelity we have not that assurance which is commonly required of all governments:

It is therefore ordered by this court and the authority thereof, that the county courts or any one magistrate out of court, shall have power, and is hereby authorized to require the oath of fidelity of all settled inhabitants amongst us, who have not already taken the same, as also to require the oath underwritten of all strangers, who after two months have their abode here; and if any person shall refuse to take the respective oath, he or they shall be bound over to the next county court or court of assistants, where if he shall refuse, he shall forfeit five pounds a week, for every week he shall continue in this jurisdiction after his said refusal, unless he can give sufficient security to the satisfaction of the court or magistrate for his fidelity during his or their residence amongst us.

Strangers to swear fidelity to this government.

You A. B. do acknowledge yourself subject to the laws of this jurisdiction, during your residence under this government; and do here swear by the great name of the ever-living God, and engage yourself to be true and faithful to the same, and not to plot, contrive or conceal any thing that is to the hurt or detriment thereof. [1652.]

CHAPTER LXXIII.

AN ACT AGAINST OPPRESSION.

For avoiding such mischiefs as may follow by such indisposed persons, as may take liberty to oppress and wrong their neighbours, by taking excessive wages for their work, or unreasonable prices for such merchandises or other necessary commodities as shall pass from man to man:

It is ordered, that if any man shall offend in any of the said cases, he shall be punished by fine or imprisonment, according to the quality of the offence, as the court to which he is presented upon lawful trial and conviction shall adjudge. [1635.]

CHAPTER LXXIV.

ACTS DIRECTING HOW DEBTS SHALL BE PAID.

Debts to be paid in the kind contracted for.

Sect. 1. It is by this court ordered and declared, that all contracts and engagements for money, corn, cattle or fish, shall be satisfied in kind according to covenant, or in default of the very kind contracted for, in one of the said kinds: provided that in such cases, where payment in kind is not made according to covenant, all just damages shall be satisfied, together with the debt, for not paying in kind according to bargain; and in no case shall any creditor be forced to take any other commodities for satisfaction of his debt, unless it be according to his contract, but it shall be lawful for such creditor to imprison the party till he make satisfaction according to covenant, or to take upon execution such goods, houses or lands, as shall be to his satisfaction; any law, custom or usage to the contrary notwithstanding. [August, 1654.]

Sect. 2. Whereas the law tit. Payments, doth make corn, cattle and fish equal with money and to be paid as money, when money is intended for, which at that time when the law was made was as good as money, but now is otherwise, and proveth prejudicial and injurious, as experience sheweth, upon several accounts: therefore as an addition to, and explanation to that law:

This court doth order and enact, that henceforth all contracts, agreements, engagements or covenants for any specie whatsoever, shall be paid in the same specie bargained for; any law, usage or custom to the contrary notwithstanding. [1670.]

All contracts and agreements to be made good by payment in specie contracted for, &c.

Sect. 3. Forasmuch as it appeareth unto this court, that there is a great stop in trade and commerce for want of money, for preventing the like mischief for time to come, it is ordered, that after the last day of this month, no man shall be compelled to satisfy any debt, legacy, fine, or any other payment in money, but satisfaction shall be accepted in corn, cattle, fish, or other commodities, at such rates as this court shall set down, from time to time, or in default thereof, by appraisement of indifferent men, to be appointed by the officer:

Provided that this order shall not extend to any debts, or other payments due, or arising upon any contract, or other original cause, preceding the last day of this month aforesaid; and this court doth order, that Indian corn, merchantable, shall be payable at the rate of four shillings the bushel; summer wheat at six shillings; rye at five shillings; barley at five shillings; and pease at six shillings; hemp and flaxseed, twelve shillings a bushel; and all these prices to be intended of such corn and seed as shall grow in this jurisdiction. [August, 1640.]

CHAPTER LXXV.

ACTS RELATING TO THE POOR.

Sect. 1. It is ordered by this court and the authority thereof; that any shire court, or any two magistrates out of court, shall have power to determine all differences about lawful settling and providing for poor persons; and shall have power to dispose of all unsettled persons into such towns as they shall judge to be most fit for the maintenance and employment of such persons and families, for the ease of this country. [1639.]

Sect. 2. And for the avoiding of all future inconveniences referring to the settling of poor people that may need relief from the place where they dwell:

It is ordered by this court and the authority thereof; that where any person with his family, or in case he hath no family, shall be resident in any town or peculiar of this jurisdiction

Order that settle poor.

for more than three months, without notice given to such person or persons by the constable or one of the selectmen of the said place, or their order, that the town is not willing that they should remain as an inhabitant amongst them; and in case after such notice given, such person or persons shall notwithstanding remain in the said place, if the selectmen of the said place shall not by way of complaint, petition to the next county court of that shire for relief in the said case, and the same prosecuted to effect; every such person or persons, as the case may require, shall be provided for, and relieved in case of necessity, by the inhabitants of the said place where he or she is so found.

And it is further ordered, that each county court shall from time to time hear and determine all complaints of this nature, and settle all poor persons according to directions of this law, in any town or peculiar within this colony; and every such person or persons shall accordingly be entertained and provided for by the selectmen or constable of the said place, at a town charge; and in case any town or peculiar shall find themselves aggrieved at such disposure of the county court, they may appeal to the next court of assistants; and where any person or persons cannot according to this law be settled in any town or peculiar, they shall then be placed in any town of that county wherein they are found, according as the county court shall appoint, and their charges satisfied unto them by the county treasurer. [May, 1659.]

Penalty for entertaining or lodging inmates by any single woman in absence of her husband, without leave, &c.

Sect. 3. This court accounting it their duty by all due means to prevent appearance of sin and wickedness in any kind: Do order that henceforth it shall not be lawful for any single woman or wife, in the absence of her husband, to entertain or lodge any inmate or sojourner with the dislike of the selectmen of the town, or magistrate, or commissioners who may have cognizance thereof, in penalty of five pounds per week on conviction thereof before any court or magistrate, or be corporally punished not exceeding ten stripes, and all constables are to take cognizance hereof for information of such cases. [May, 1674.]

Order for the relief of the distressed.

Sect. 4. This court considering the inconvenience and damage which may arise to particular towns by such as, being forced from their habitations through the present calamity of the war, do repair unto them for succour: Do order and declare, that such persons, being inhabitants of this jurisdiction, who are so forced from their habitations and repair to other plantations for relief, shall not by virtue of their residence in said plantations they repair unto be accounted or reputed inhabitants thereof, or imposed upon them according to law, tit. Poor, but in such case, and where necessity requires, by reason of inability of relations &c. they shall be supplied out of the publick treasury; and that the selectmen of each town inspect this matter, and do

likewise carefully provide that such men or women may be so employed and children disposed of, that as much as may be publick charge may be avoided. [July, 1675.]

CHAPTER LXXVI.

ACTS RELATING TO POSSESSION OF LANDS, &c. TITLE BY, &c.

SECT. 1. THE court taking into consideration the great neglect of many persons, in the infancy of these plantations, to observe any due order or legal course for the confirmation of such sales and alienations of houses and lands, as have passed from man to man, which thing may several ways be of very evil consequence to posterity:

Doth therefore order and hereby enact; that any person or persons, that hath either himself or by his grantees or assigns, before the law made for direction about inheritances, bearing date October the nineteenth, one thousand six hundred and fifty-two, possessed and occupied as his or their own proper right, in fee simple, any houses or lands within this jurisdiction, and shall so continue, whether in their own persons, their heirs or assigns, or by any other person or persons, from, by, or under them, without disturbance, let, suit or denial legally made, by having the claim of any person thereto entered with the recorder of the county, where such houses or lands do lie, with the names of the person so claiming, and the quantity, bounds of the lands or houses claimed, and such claim prosecuted to effect within the term of five years next after the twentieth of this present May, one thousand six hundred and fifty-seven, every such proprietor, their heirs and assigns shall for ever after enjoy the same, without any lawful let, suit, disturbance or denial, by any after claim of any person or persons whatsoever, any law or custom to the contrary notwithstanding. Title to inheritances limited within five years.

And for all bargains or alienations made, or to be made, after the aforesaid time, that every person concerned therein, observe the directions given in the above recited law, upon peril of suffering all the damage that shall accrue to them, their heirs and assigns by neglect thereof. [1657.]

SECT. 2. Whether the law, tit. Possessions intend the confirmation of land to the possessor, where the grant of the said land was to another person, and the possessor nothing to show for the alienation thereof but his possession according to that law? the court resolves this on the affirmative. [May, 1672.] Possession according to law gives title &c.

CHAPTER LXXVII.

AN ACT RESPECTING PORTERS.

THERE being a very great abuse in the towns of Boston and Charlestown by porters, who many times do require and exact more than is just and righteous for their labours:

Porters to be ordered by the selectmen.

It is ordered by this court; that from henceforth the selectmen of the said towns from time to time shall have power to regulate in this case, and to state their wages, as in their understanding shall be most just and equal, as also to determine what persons shall be employed therein. [1655.]

CHAPTER LXXVIII.

ACTS RESPECTING POUNDS AND POUND BREACH.

SECT. 1. FOR prevention and due recompense of damages in cornfields and other inclosures done by swine and cattle:

Pound in every town.

It is ordered by this court and authority thereof, that there shall be one sufficient pound or more, made and maintained in every town and village within this jurisdiction, for the impounding of all such swine and cattle as shall be found in any corn field or other inclosure.

And whosoever impounds any swine or cattle shall give present notice to the owner if he be known, or otherwise they shall be cried at the two next lectures or markets; and if swine or cattle escape out of pound, the owner, if known, shall pay all damages according to law.

Cattle impounded to be replevied or damage satisfied.

And every person or persons having notice given them, or otherwise left in writing at their house or place of their usual abode, of any of their cattle impounded or otherwise restrained, shall forthwith give satisfaction to the party so wronged, or otherwise replevy their cattle, and prosecute the same according to law, upon peril of suffering all the loss and damage that shall come to their cattle by standing in the pound or other lawful place of restraint. [1645. 47. 57.]

SECT. 2. And if any person shall resist or rescue any cattle going to pound, or shall by any way or means convey

them out of pound or other custody of the law, whereby the party wronged may lose his damages, and the law be deluded, that in case of mere rescues, the party so offending shall forfeit to the treasury forty shillings. Rescues and pound breach.

And in case of pound breach five pounds, and shall also pay all damages to the party wronged, and if in the rescues any bodily harm be done to the person of any man or other creature, they may have remedy against the rescuers; and if either be done by any not of ability to answer the forfeiture and damages aforesaid, they shall be openly whipped by warrant from any magistrate before whom the offender is convicted in the town or plantation where the offence was committed, not exceeding twenty stripes for the mere rescue or pound breach; and for all damages to the party, they shall satisfy by service, as in case of theft. Fine or be whipped.

And if it appear there were any procurement of the owner of the cattle thereunto, and that they were abettors therein, they shall pay forfeiture and damages as if themselves had done it. [1647.]

CHAPTER LXXIX.

AN ACT RESPECTING PRESCRIPTIONS AND CUSTOMS.

It is ordered, decreed, and by this court declared; that no custom or prescription shall ever prevail amongst us in any moral case, (our meaning is) to maintain any thing that can be proved to be morally sinful by the word of God. [1641.]

CHAPTER LXXX.

ACTS RESPECTING PRISONS, PRISONERS, AND HOUSES OF CORRECTION.

Sect. 1. It is ordered; that such malefactors as are committed to any common prison shall be conveyed thither at their own charge, if they be able, otherwise at the charge of the country. [1646.] Prisoners carried at their own charge.

SECT. 2. For prevention and redress of many misdemeanours and evil practices, daily increasing:

House of correction in each county.

It is ordered, that there shall be a house of correction provided in each county, at the county's charge, to be settled, ordered and improved as the magistrates in each county court or court of assistants shall agree and direct.

SECT. 3. And it shall be in the power of every county court to make use of such prison as is at present erected in the county, for a house of correction, till houses of correction be provided and finished.

County court to appoint a master.

Also to provide and authorize the keeper or some meet person to be master of such house, as they shall judge meet;

Selectmen to provide materials to work.

and the selectmen of the town where such house is appointed shall procure, in the most prudent way, some competent stock of hemp, flax, or other materials, and upon account to commit the same into the hands of the master of the house, to be employed at his discretion by the labour of such delinquents, as shall be committed to him by authority, and the stock being in value or kind preserved to such as put in the same, all the benefit attained by the labour of the person committed shall be to the use of the master, allowing only so much as will keep the delinquent with necessary bread and water, or other mean food out of the same, or sixpence out of the shilling earned by his or her labour.

Master's fees.

Delinquent to be corrected and kept to work.

And at the first coming into the house of correction, the master thereof, or any he shall procure, or the common corrector residing in the town, shall whip every delinquent, not exceeding ten stripes, and after shall employ him or her by duly stint, and if the party be stubborn, disorderly or idle and not perform their task, and that in good condition, the master shall correct them or abridge them of their food, as the cause shall require, till they are brought to some meet order.

One magistrate may commit to the house of correction.

And it shall be in the power of one magistrate to commit idle persons or stubborn persons against such as have authority over them, runaways, common drunkards, pilferers, common night-walkers and wanton persons, as tending to uncleanness in speeches or actions, &c.

And it shall not be in the power of the master to deliver out of the house of correction, unless he hath a discharge or warrant under the hand of a magistrate; and if the delinquent be committed by the court, not to be delivered but by order of the court, or under the hand of the greater part of the members of the court. [1646. 55. 57.]

SECT. 4. On complaint of the keeper of the prison, that some malefactors and other prisoners have made escape, by means of some evil-disposed persons that supply them with instruments to effect the same:

It is therefore ordered by this court and the authority thereof, that if any person whatsoever shall any ways,

either directly or indirectly, convey any instrument or other thing whatsoever to any prisoner, by which such prisoner, or any other prisoner, either shall, may, or might break prison, or work him or herself unlawfully out of the same; if it were for debt, such person so transgressing shall pay the full debt, and incur the penalty of forfeiture of as much to the country, or undergo such corporal punishment as the court on whose proceedings such imprisonment followed, or the court of assistants shall impose, order or appoint. To prevent breaking of prisons.

And if any prisoner committed for offence or offences, criminal or capital, shall by such wicked compliance of any person, break prison or make escape out of prison, or be found in preparation thereunto, the person or persons which directly or indirectly conveyed such instruments, tools, or other things, whereby such prisoner shall or might work his or her escape from prison; such person shall be liable to the same corporal punishment which the prisoner was liable unto, and also incur such further penalty by fine, imprisonment, or corporal punishment as the county court, court of assistants or general court shall appoint: so that where the prisoners are not actually escaped, in such cases any court to moderate as they shall see meet.

And if the escape of any prisoner appear to be through the fault or neglect of the jailor, he shall then be liable to such penalties as the prisoner was, according as the court which hath cognizance thereof shall determine. [May, 1669.]

Sect. 5. In answer to some questions propounded by the keeper of the prison for his direction in the execution of his office:

This court do declare, that it is the duty of all prison keepers from time to time to present a true list of all the prisoners to such courts of judicature, as are properly to take cognizance of their crimes, and not to discharge any their custody, but by the authority of the law warranting the same, and that the court or other authority taking cognizance thereof shall determine the costs to be allowed the keeper for maintenance of the prisoner, as also by whom he shall be satisfied, and that where any are committed in any civil cause, the plaintiff at whose suit he is imprisoned shall secure the keeper all his necessary expenses during his imprisonment, both for food and physick, and other necessaries for his livelihood; and in case of his neglect so to do, the party imprisoned taking his oath before any magistrate, that he is not worth five pounds, the keeper shall not stand further charged with him, but may dismiss such prisoner his custody; any former law, usage or custom to the contrary notwithstanding. Directions to prison keepers.

Sect. 6. And it is declared by this court, that the ordinary allowance to be made for the food of any prisoner shall be two shillings and six pence the week. [1663.]

CHAPTER LXXXI.

AN ACT RELATING TO PROTESTS AND DISSENTS IN COURT.

Liberty to enter a dissent in cases in court.

It is ordered, and by this court declared, that it is and shall be in the liberty of any member or members of any court, council, or civil assembly, in cases of making or executing any order that properly concerneth religion, or any cause capital, or wars, or subscriptions to any publick article or remonstrance, in case they cannot in judgment and conscience consent to that way the major vote or suffrage goes, to make their contra remonstrance or protestation in speech or writing, and upon their request to have their dissent recorded in the rolls of that court, so it be done christianly and respectively for the manner, and the dissent only be entered without the reasons thereof, for avoiding tediousness. [1641.]

CHAPTER LXXXII.

AN ACT LIMITING PUNISHMENTS, AND AGAINST TORTURE.

None punished twice for one offence.

Sect. 1. It is ordered, and by this court declared, that no man shall be twice sentenced by civil justice for one and the same crime, offence or trespass.

And for bodily punishments, we allow amongst us none that are inhuman, barbarous, or cruel.

Not above 40 stripes.

And no man shall be beaten with above forty stripes for one fact at one time, nor shall any man be punished with whipping, except he have not otherwise to answer the law, unless his crime be very shameful, and his course of life vicious and profligate.

No torture before conviction.

Sect. 2. And no man shall be forced by torture to confess any crime against himself or any other, unless it be in some capital case, where he is first fully convicted by clear and sufficient evidence to be guilty; after which if the case be of that nature, that it is very apparent there be other conspirators or confederates with him, then he may be tortured, yet not with such tortures as are barbarous and inhuman.

CHAPTER LXXXIII.

ACTS RESPECTING RECORDS, RECORDERS, CLERKS, &c.

SECT. 1. WHEREAS records of the evidence, whereupon the verdict and judgment in cases doth pass, being duly entered and kept, would be of good use, both for precedents, and to such as shall have just cause to have their cases reviewed:

It is therefore ordered by this court and the authority thereof, that every judgment given in any court, or by one magistrate, or by commissioners, shall be recorded in a book, and all the evidences (which are to be given in, in writing, in fair and large papers) shall be kept, and the party for whom such evidence is brought shall pay to the recorder or clerk of the court for filing and safe keeping the same two pence for each evidence; and the foreman of every jury shall faithfully deliver up all such testimonies or other writings committed to them, unto the recorder or clerk of the court, when they give in their verdict in every case.

Evidence to be given in writing.

To be kept on file.

SECT. 2. It is ordered, that the clerk of the writs in the several towns shall record all births and deaths of persons in their towns, and for every birth and death they so record they shall be allowed three pence; and they shall yearly deliver in to the recorder of the court of the jurisdiction where they live a true transcript thereof, together with so many pence as there are births or deaths to be recorded.

Births, deaths, marriages.

And all parents, masters of servants, executors or administrators respectively, shall bring in to the clerk of the writs, in their several towns, the names of such persons belonging to them, or any of them, as shall either be born or die.

Parents, masters, &c. to certify the clerk.

And also every new-married man shall likewise bring a certificate under the hand of the magistrate who married him unto the said clerk, to be by him recorded, who shall be allowed three pence for the same; and the said clerk shall deliver as aforesaid unto the recorder a certificate, with a penny a name for recording the said marriage: And if any person shall neglect to bring a note or certificate as aforesaid, together with three pence a name to the said clerk of the writs to be recorded, more than one month after such birth, death, or marriage, he shall pay twelve pence to the said clerk, who shall demand the same; and in case any shall refuse to satisfy him, he shall then return the name of such person or persons to the next magistrate or commis-

Penalty of not certifying.

sioners of the town where such person dwells, who shall send for the party so refusing; and in case he shall still persist therein, shall give order to the constable to levy the same: and if any clerk of the writs shall neglect his duty hereby enjoined, he shall pay the following penalties, viz. for neglecting a yearly return to the county court, five pounds; and for neglect of returning the name of any person returnable by this order, whether born, married, or dead, more than thirty days before his return to the county court, five shillings; and that no neglect may be herein for the future, the clerk of each county court is hereby enjoined from time to time to certify the county courts respectively the names of all such clerks of the writs, who shall neglect to make their yearly return according to this law, who, upon such notice given, shall send for such clerks, and do in the case as the law requireth.

Clerk to return all births, deaths, &c. to the county court.

Sect. 3. It is ordered and declared, that every man shall have liberty to record in the publick rolls of any court any testimony given upon oath in the same court, or before two magistrates, or any deed or evidence, legally confirmed, there to remain in perpetuam rei memoriam.

Liberty to record testimonies and evidences.

And that every inhabitant of the country shall have free liberty to search and view any rolls, records or registers of any court or office, except of the council, and to have a transcript or exemplification thereof, written, examined and signed by the hand of the officer, paying the accustomed fees.

To view publick records.

And if any person or persons repairing to any publick officer of this jurisdiction, to view any record or writings committed to his charge, shall wittingly and willingly defaee or rent any such record or writing, upon complaint of such officer to any magistrate, and proof by oath of the said officer, or other sufficient witness, every person so offending shall forfeit by the party concerned therein treble the damage that might have ensued or accrued to him or them thereby, and shall also be fined as much to the country, or suffer two months imprisonment without bail or mainprize, or stand in the pillory two hours in Boston market, with a paper over his head written in capital letters, A DEFACER OF RECORDS; the special or particular punishment to be determined by the next county court where the offence was committed, and shall also stand bound to the good behaviour, during the pleasure of the court. [1639. 42. 43. 44. 47. 52. 57.]

Penalty of defacing records.

Sect. 4. Resolved upon the question, that the words Rolls, Records, or Register of any court or office, contained in the printed laws, tit. Records, &c. are to be interpreted and understood only of such acts of court as concern particular persons in matters of justice, license, grant or ap-

Directions to court officers to grant copies, &c.

probation, or of such laws as are of publick concernment. [1665.]

Seasonable transcribing and delivery of matters of publick concern by the secretary.

SECT. 5. Whereas by reason that the orders of this court, referring to the commissionating, appointing, and empowering any particular person or persons for any special trust, negotiation or other matter, as from time to time do arise, are not duly and seasonably transcribed and delivered to those concerned therein, the expectation of this court is many times disappointed, and damage to the publick doth inevitably accrue:

To the marshal general.

It is therefore ordered by this court, that the secretary, from time to time, within ten days after the end of every session of the general court, shall copy out all such special orders of this court as abovesaid, and deliver the same to the marshal general, who shall receive the same at the secretary's house, and take order for the speedy and certain conveyance thereof, to those whom they are especially directed unto; and for such orders as do require a more speedy despatch than the time above limited, the officers above named shall accordingly hasten the same.

Marshal general to attend the treasurer's and secretary's directions, &c.

Also the marshal general shall from time to time receive all warrants that are to be sent to the several towns from the country treasurer; as also the laws that are at any time to be published, either printed or written, and cause them to be delivered according to the direction given him from the treasurer or secretary. [1668.]

All affidavits to be in writing.

SECT. 6. Whereas experience doth shew the inconvenience of taking verbal testimonies in court, by reason of many impertinences in their relations, so that the clerks cannot well make a perfect record thereof; and to prevent all mistakes and ungrounded jealousies against the officers: Be it hereby enacted and decreed, that henceforth all testimonies shall be presented in writing to the court, either attested before a magistrate (if the party be within ten miles of the court) to be then attested in court upon oath; and the party for whom such witness is brought shall pay to the recorder for filing and safe keeping of the same two pence; and for transcribing a copy thereof (when it is called for) six pence for every page consisting of thirty lines, and so proportionally thereunto. Further, it is hereby ordered, that the foreman of every jury shall faithfully deliver up all such testimonies or other writings committed unto them unto the recorder or officer of the court, when they give in their verdicts in every case. [October, 1650.]

CHAPTER LXXXIV.

AN ACT GRANTING THE WRIT OF REPLEVIN.

It is ordered and by this court declared, that every man shall have liberty to replevy his cattle or goods impounded, distrained, seized or extended, unless it be upon execution after judgment, and in payment of fines; provided he put in good security to prosecute the replevin, and to satisfy such demand as his adversary shall recover against him in law. [1641.]

CHAPTER LXXXV.

ACTS RESPECTING THE SABBATH.

During the colony government, many acts were passed and revised for the due observation of the Lord's day, too long to be printed at large in this limited edition of the Colony and Province Laws; and the printing of them at large is the less necessary, as the substance of them has been brought forward and published in the Commonwealth's statutes upon this subject.

CHAPTER LXXXVI.

ACTS RESPECTING SAILORS.

Sect. 1. Whereas many miscarriages are committed by sailors, by their immoderate drinking, and other vain expenses in ordinaries, which oftentimes occasion prejudice and damage to the masters and owners of the vessels to which they belong, their men being oftentimes arrested for debts so made when their ships are ready to set sail; for prevention whereof:

It is ordered by this court and the authority thereof; that no innkeeper, victualler or other seller of wine, beer or strong liquors, shall, after publication hereof, arrest, attach, or recover by law, any debt or debts so made by any sailor or sailors as aforesaid, except the master or owner of such ship or vessel to whom such sailors belong have given under his hand to discharge the same; any law, use or custom to the contrary notwithstanding.

No credit to be given to mariners without consent of the master or commander.

Sect. 2. For the prevention of great trouble and inconvenience that often befals masters and commanders of ships and other vessels by reason of their men running themselves into debt to several persons in the ports where they arrive, and, not being able to discharge their said debts, are restrained or imprisoned for the same, to the great hinderance and prejudice of the commanders and owners of such ship or vessel:

It is therefore ordered and enacted, that after the publication hereof, no person whatsoever do trust or give credit to any mariner or seaman belonging to any ship or other vessel arriving from foreign parts, without the knowledge and consent of their master or commander; nor shall any process or attachment be granted against any seaman or mariner for debts and engagements made as aforesaid: and if, through any carelessness or mistake in any officer, any such process or attachment be granted, it shall be esteemed void in law. [October, 1682.]

CHAPTER LXXXVII.

AN ACT RESPECTING THE PUBLICK SEAL.

It is ordered by this court and the authority thereof, that the governor for the time being, or any other officer to whom the custody of the publick seal is committed, do affix the publick seal unto all commissions for military officers, and to all other commissions and writings of publick concernment, that shall issue forth from this court or the council, without paying any thing for the seal; and the secretary for the time shall write, and procure the seal to be affixed, and deliver the said commissions and other publick instruments to the parties concerned; and for his fees of writing and wax, he is allowed one shilling for every commission or other publick instruments, to be paid by the treasurer of the country: and this law to be in force, any law, custom or usage to the contrary notwithstanding. [1664.]

CHAPTER LXXXVIII.

ACTS RESPECTING SCHOOLS.

SECT. 1. IT being one chief project of Satan to keep men from the knowledge of the scripture, as in former times keeping them in unknown tongues, so in these latter times by persuading from the use of tongues, that so at least the true sense and meaning of the original might be clouded and corrupted with false glosses of deceivers; to the end that learning may not be buried in the graves of our forefathers, in church and commonwealth, the Lord assisting our endeavours:

Schools in towns of 50 families.

It is therefore ordered by this court and authority thereof; that every township within this jurisdiction, after the Lord hath increased them to the number of fifty householders, shall then forthwith appoint one within their towns to teach all such children as shall resort to him to write and read, whose wages shall be paid either by the parents or masters of such children, or by the inhabitants in general, by way of supply, as the major part of those that order the prudentials of the town shall appoint: provided that those who send their children be not oppressed by paying much more than they can have them taught for in other towns.

How maintained.

Grammar school.

Towns neglect to pay 5l. per annum to the next school.

SECT. 2. And it is further ordered, that where any town shall increase to the number of one hundred families or householders, they shall set up a grammar school, the master thereof being able to instruct youth so far as they may be fitted for the university: and if any town neglect the performance hereof above one year, then every such town shall pay five pounds per annum to the next such school, till they shall perform this order. [May, 1647.]

SECT. 3. Forasmuch as it greatly concerns the welfare of this country, that the youth thereof be educated, not only in good literature, but in sound doctrine:

Heterodox school master not to be allowed.

This court doth therefore commend it to the serious consideration and special care of our overseers of the college, and the selectmen in the several towns, not to admit or suffer any such to be continued in the office or place of teaching, educating, or instructing youth or children in the college or schools, that have manifested themselves unsound in the faith, or scandalous in their lives, and have not given satisfaction according to the rules of Christ.

Sect. 4. Whereas the law requires every town consisting of one hundred families or upwards to set up a grammar school and appoint a master thereof, able to instruct youth, so as to fit them for the college; and upon neglect thereof the said town is to pay five pounds per annum to the next latin school until they shall perform that order:

The court upon weighty reasons judge meet to declare and order; that every town of one hundred families and upwards, that shall neglect or omit to keep a grammar school, as is provided in that law, such towns shall pay ten pounds per annum unto the next town school that is settled according to that law. [May, 1671.]

A grammar school to be in towns of 100 families.

Sect. 5. As an addition to the law, tit. Schools, this court doth order and enact that every town, consisting of more than five hundred families or householders, shall set up and maintain two grammer schools, and two writing schools, the masters whereof shall be fit and able to instruct youth as said law directs. And whereas the said law makes the penalty for such towns as provide not schools, to pay to the next school ten pounds; this court hereby enacts that the penalty shall be twenty pounds, where there are two hundred families or householders. [October, 1683.]

Law for erecting two grammar schools in towns.

CHAPTER LXXXIX.

AN ACT AGAINST SELF-MURDER.

This court, considering how far satan doth prevail upon several persons within this jurisdiction to make away themselves, judgeth that God calls them to bear testimony against such wicked and unnatural practices, that others may be deterred therefrom:

Do therefore order, that from henceforth, if any person, inhabitant or stranger, shall at any time be found by any jury to lay violent hands on themselves, or be wilfully guilty of their own death, every such person shall be denied the privilege of being buried in the common burying place of christians, but shall be buried in some common high-way, where the selectmen of the town where such person did inhabit shall appoint, and a cart-load of stones laid upon the grave as a brand of infamy, and as a warning to others to beware of the like damnable practices. [1660.]

Self-murderers denied ordinary burials.

CHAPTER XC.

ACTS FOR THE INCREASE OF SHEEP.

SECT. 1. WHEREAS the keeping of sheep tends much to the benefit of the country, and may in short time make good supply towards the clothing of the inhabitants, if carefully preserved; and forasmuch as all places are not fit and convenient for that end:

Liberty to keep sheep on all commons.

It is ordered by this court, that henceforth it shall be lawful for any man to keep sheep on any common, be it for cows, oxen or otherwise, belonging to the town where he lives, or where at that time he may have right of common, and that without limitation, in commons not stinted, and in such commons that are stinted, it shall be lawful for any

Five sheep for one cow.

inhabitant to use any or all his proportion of common for sheep, accounting five sheep for one cow, steer or ox; and further, it shall be lawful for the selectmen of every town,

Selectmen to order clearing of commons for sheeps' pasture.

from time to time, to make such orders in their respective towns for the clearing of their commons of wood and brush, for keeping of sheep, as also for the fines of putting rams to their flocks, as they shall judge meet. [October, 1648.]

Prohibition for transporting of sheep.

SECT. 2. Whereas this country is at this time in great straits in respect of clothing, and the most likeliest way tending to our supply in that respect is the raising and keeping of sheep within our jurisdiction, it is therefore ordered and enacted by this court and the authority thereof, that, after the publication hereof, no person or persons whatsoever shall transport any ewes or ewe lambs out of this jurisdiction to any foreign port or place, upon the penalty of the forfeiture of five pounds for every ewe or ewe lamb so transported; the one fourth part to the informer, and the other three parts to the country: provided this order shall not hinder the selling of such sheep to any of the other colonies in confederation with us, they upon due notice given by our commissioners making a law to this purpose, to restrain transporting of sheep out of their respective jurisdictions.

No sheep under two years old to be killed.

And it is further ordered by the authority aforesaid, that no ram or wether lambs shall henceforth be killed by any butcher or other person, except by the keepers or masters of sheep for their own particular occasion, until they shall be two years old, upon penalty of twenty shillings a lamb, the one half to the country, and the other half to the informer, until this court take further order therein. This order to be presently published by a drum in the market place at Boston, and posted up in some publick place, which shall be sufficient publication in this case. [August, 1654.]

CHAPTER XCI.

ACTS TO PROMOTE THE BUILDING OF GOOD SHIPS, &c.

SECT. 1. WHEREAS the building of ships is a business of great importance for the common good, and therefore suitable care ought to be taken that it be well performed, according to the commendable course of England and other places:

It is therefore ordered by this court and the authority thereof; that when any ship is to be built within this jurisdiction, or any vessel above thirty tons, the owner, or builder in his absence, shall before they begin to plank, repair to the governor or deputy governor, or any two magistrates, upon the penalty of ten pounds, who shall appoint some able man to survey the work and workmen from time to time, as is usual in England, and the same so appointed shall have such liberty and power as belongs to his office. Surveyors appointed to view all ships in building.

And if any ship-carpenter shall not, upon his advice, reform and amend any thing which he shall find to be amiss, then upon complaint to the governor, or deputy governor, or any two magistrates, they shall appoint two of the most sufficient ship-carpenters of this jurisdiction, and shall authorize them from time to time, as need shall require, to take view of every such ship and all works thereto belonging, and to see that it be performed and carried on according to the rules of their art. Their power.

And for this end an oath shall be administered to them, to be faithful and indifferent between the owner and the workman, and their charges shall be born by such as shall be found in default: Oath. Charges.

And those viewers shall have power to cause any bad timbers, or other insufficient work or materials, to be taken out and amended at the charge of them through whose default it grows. [October, 1641.]

SECT. 2. It is ordered by the authority of this court; that all ships, which come for trading only from other parts, shall have free access into our harbours, and quiet riding there, and free liberty to depart without any molestation by us, they paying all such duties and charges required by law in the country, as others do. [1645.]

SECT. 3. This court having perused and considered the letter received from his majesty's most honourable privy council, dated the 24th of June last, relating to an act of parliament, entitled an act for the encouraging and increasing of shipping and navigation; as an addition and explanation of former orders made by this court concerning these affairs:

Officers authorized about shipping.

It is hereby ordered and enacted; that the several officers hereafter mentioned are hereby deputed and authorized to see that the said act be performed, so far as it concerns the government of this plantation, both in seizing ships or vessels inhibited by the said act to trade here, taking bonds of all ships and vessels that lade in our ports any commodities expressed in the said act, of the growth, product or manufactory of the English plantations, who shall not produce certificate that they have given bond already as the said act requireth.

And in case of neglects or contempt, to seize such vessels or ships that lade the aforesaid goods without giving bond or shewing certificates: and to keep accounts of all such ships and vessels, with the names of the masters, that lade here as aforesaid, and return an account twice every year with copies of the said bonds and certificates unto the governor for the time being, by him to be transmitted to London, directed to the chief officer there.

Penalty for drinking healths &c. in ships or vessels.

SECT. 4. Be it also enacted by the authority of this court, that no masters of ships, or seamen, having their vessels riding within any of our harbours in this jurisdiction, shall presume to drink healths, or suffer any healths to be drunk within their vessels by day or night, or to shoot off any gun after the daylight is past, or on the sabbath day, on penalty for every health twenty shillings, and for every gun so shot twenty shillings.

And the captain of the castle is hereby enjoined to give notice of this order to all ships that pass by the castle. [1663.]

SECT. 5. To prevent calumny, reproach and prejudice to this colony and the inhabitants, and trade thereof:

All trade with ships forbidden before the government be acknowledged.

It is ordered, that no person shall henceforth trade or truck with any vessel that shall arrive upon our coast, until the same shall come under command, and ride in our usual harbours, and have acknowledged the government as the law provides, upon the penalties of all such goods traded, and such further punishment as the court of assistants shall adjudge. [May, 1671.]

CHAPTER XCII.

ACTS RESPECTING STRANGERS.

SECT. 1. WHEREAS we are credibly informed that great mischiefs have been done to other plantations by reason of commanders, soldiers, and other strangers; to prevent the like in this jurisdiction:

It is ordered by this court and authority thereof, that henceforth all strangers of what quality soever, above the age of sixteen years, arriving in any ports or parts of this jurisdiction, in any ship or vessel, shall immediately be brought before the governor, deputy governor, or two other magistrates, by the master or mate of the said ship or vessel, upon penalty of twenty pounds for default thereof, there to give an account of their occasions and business in this country, whereby satisfaction may be given, and order taken with such strangers as the said governor, deputy governor, two magistrates, or the next county court shall see meet, who shall keep a record of the names and qualities of all such strangers, to be returned to the next general court.

Strangers arriving to be brought before the governor

SECT. 2. And for the publication of this order:

It is ordered, the same to be posted upon the doors or posts of the meeting-houses and other publick places in all the port towns of this jurisdiction.

Captain of the castle to give notice of this order.

And the captain of the castle shall make known this order to every ship or vessel as it passeth by, and the constable of every port town shall endeavour to do the like to such ships or vessels before they land their passengers. [1651.]

And if any strangers, or people of other nations, professing the true christian religion, shall fly to us from the tyranny or oppression of their persecutors, or from famine, wars or the like necessary and compulsory cause, they shall be entertained and succoured amongst us according to that power and prudence God shall give us. [1641.]

Strangers to be succoured.

Every person within this jurisdiction, whether inhabitant or stranger, shall enjoy the same law and justice that is general for this jurisdiction, which we constitute and execute one towards another in all cases proper to our cognizance, without partiality or delay. [1641.]

Strangers to have equal justice.

No town or person shall receive any stranger resorting hither with intent to reside in this jurisdiction, nor shall allow any lot or habitation to any, or entertain any such above three weeks, except such person shall have allowance under the hand of some one magistrate, upon pain of every

town that shall give or sell any lot or habitation to any not so licensed such fine to the country as the county court shall impose, not exceeding fifty pounds, nor less than ten pounds; and of every person receiving any such for longer time than is hereby allowed, except in case of entertainment of friends resorting from other parts of this country in amity with us, to forfeit as aforesaid, not exceeding twenty pounds, nor less than four pounds; and for every month after so offending shall forfeit as aforesaid, not exceeding ten pounds, nor less than forty shillings.

No town or person to entertain strangers without allowance.

And every constable shall inform the courts of all newcomers, which they know to be admitted without license from time to time. [1637. 38. 47.]

Finable.

Sect. 3. It is ordered by this court and the authority thereof, that after the publication hereof no stranger shall have any proeess or attachment granted against a stranger, before the plaintiff give in sufficient caution or security to respond all costs and damages that shall be judged against him, nor shall any ship or other vessel arriving from foreign parts, or the master or commander thereof be arrested or restrained without like sufficient caution or security given by the plaintiff to respond all costs and damages as aforesaid. [October, 1682.]

No attachment to be granted against ships or mariners from foreign ports.

CHAPTER XCIII.

ACTS RESPECTING SURETIES AND GOODS ATTACHED.

Sect. 1. Upon information of some inconveniences accruing to several persons, in that men take themselves acquitted and free from all legal observations in case of appearance in courts, according to the express terms of the bond, or at most if the principal there stay till verdict and judgment be given (which if they be) they may then make away their estates, or absent their persons before the twelve hours be expired for granting execution, whereby the party recovering may either be deprived of, or much damaged in his just rights:

It is therefore ordered by this court and the authority thereof; that henceforth all goods attached upon any action shall not be released upon the appearance of the party, or judgment given, but shall stand engaged until the judgment, or the execution granted upon the said judgment be discharged:

Not discharged till judgment be satisfied.

Nor shall any surety or sureties for appearance in any court, except in capital or criminal cases, be released from his or their bond until the execution as aforesaid be discharged and satisfied, or the principal person be surrendered into the hands of the marshal or his deputy, who shall secure him till the judgment be discharged, any law, custom or usage to the contrary notwithstanding.

Or the person delivered to the marshall.

Provided always, that henceforth in all civil proceedings (except in cases where the defendant is a stranger) where execution is not taken out and executed within one month after that judgment is granted, all such attachments, whether on persons or estates, with sureties, shall be released and void in law; any law, usage or custom to the contrary notwithstanding: unless the court that granted the judgment shall see cause to give further time, and respite of execution in any particular case. [May, 1659.]

Goods and persons attached one month after judgment released.

SECT. 3. For explanation of, and addition to the law tit. Sureties and goods attached, where it is provided that sureties as well as principals shall be responsible for one month to pay the debt, unless he or they surrender the principal into the hands of the marshal or deputy, but no way provided in the said law how the sureties may be compelled thereunto:

It is therefore ordered, and hereby declared, that in such case the party and sureties being called and the bond declared forfeited upon non-appearance, the case shall proceed to hearing and judgment at the same court, as in case of the defendant's non-appearance upon attachment of goods: and if the case be found for the plaintiff, that judgment be granted against him and his sureties, and execution be issued out accordingly, and to be in force against the sureties as well as the principal, for one month after judgment given, as the said law intends. [May, 1672.]

Where bonds are forfeited the case to proceed.

Execution to issue out against sureties.

CHAPTER XCIV.

AN ACT AGAINST SWEARING AND CURSING.

SECT. 1. IT is ordered by this court and authority thereof; that if any person within this jurisdiction shall swear rashly or vainly by the holy name of God, or other oath, he shall forfeit to the common treasury for every such offence ten shillings; and it shall be in the power of any magistrate, by warrant to the constable, to call such person before him, and upon sufficient proof to sentence such offender, and to

Swearing, 10s.

give order to levy the fine; and if such person be not able, or shall refuse to pay the said fine, he shall be committed to the stocks, there to continue not exceeding three hours, nor less than one hour.

or sit in stocks.

Sect. 2. And if any person shall swear more oaths than one at a time, before he remove out of the room or company where he so swears, he shall then pay twenty shillings.

More oaths than one, 20s.

The like penalty shall be inflicted for profane and wicked cursing of any person or creature, and for the multiplying the same, as is appointed for profane swearing; and in case any person so offending, by multiplying oaths or cursing, shall not pay his or their fines forthwith, they shall be whipt or committed to prison till they shall pay the same, at the discretion of the court or magistrate that shall have cognizance thereof.

Like penalty for cursing.

CHAPTER XCV.

ACTS TO PREVENT FIRES BY THE USE OF TOBACCO, &c.

It is ordered by this court; that no man shall take any tobacco within twenty poles of any house, or so near as may endanger the same, or near any barn, corn, or haycock, as may occasion the firing thereof, upon pain of ten shillings for every such offence, besides full recompense of all damages done by means thereof:

Nor shall any take tobacco in any inn or common victual house, except in a private room there, so as neither the master of the said house, nor any other guest there shall take offence thereat, which if any do, then such person shall forthwith forbear, upon pain of two shillings six pence for every such offence. And all fines incurred by this law, the one half part shall be to the informer, the other to the poor of the town where the offence is done. [1638. 47.]

CHAPTER XCVI.

ACTS RESPECTING TOWNS, THEIR POWERS, &c.

SECT. 1. WHEREAS particular towns have many things which concern only themselves and the ordering their own affairs, and disposing of business in their own town:

It is therefore ordered, that the freemen of every town, with such others as are allowed, or the major part of them, shall have power to dispose of their own lands and woods, with all the priviléges and appurtenances of the said towns, to grant lots, and also to choose their own particular officers, as constables, surveyors for the high ways, and the like annually, or otherwise as need requires; and to make such laws and constitutions as may concern the welfare of their town; provided they be not of a criminal, but of a prudential nature, and that their penalties exceed not twenty shillings for one offence, and that they be not repugnant to the publick laws and orders of the country.

Towns power to dispose lands.

Choose officers.

To make orders.

And if any inhabitant shall neglect or refuse to observe them, they shall have power to levy the appointed penalty by distress.

And if any man shall behave himself offensively at any town meeting, the rest then present shall have power to sentence him for such offence, so as the penalty exceed not twenty shillings.

SECT. 2. And every township hath power to choose yearly, or for less time, a convenient number of fit men to order the planting, and prudential affairs of their towns, according to instruction given them in writing, provided nothing be done by them contrary to the laws and orders of the country, provided also that the number of the selectmen be not above nine.

To choose selectmen.

SECT. 3. And all towns shall take care, from time to time, to order and dispose all single persons and inmates within their towns to service or otherwise, and if any be grieved at such order or disposal, they have liberty to appeal to the next county court.

To dispose of single persons.

SECT. 4. And it is hereby ordered and enacted; that all Englishmen, that are settled inhabitants and householders in any town, of the age of twenty-four years, and of honest and good conversations, being rated at eighty pounds estate in a single country rate, and that have taken the oath of fidelity to this government, and no other (except freemen) may be chosen selectmen, jurors or constables, and have

their vote in the choice of the selectmen, for the town affairs, assessment of rates and other prudentials proper to the town; provided always the major part of the companies of selectmen be freemen from time to time, that shall make a valid act, as also where no selectmen are, to have their vote in ordering schools, herding of cattle, laying out high-ways, and distributing lands; any law, use or custom to the contrary notwithstanding. [1670.]

Who may vote in towns.

Sect. 5. Whereas complaints have been made, that many, especially in Boston, who are meet and fit to serve the country in the office of constable, take encouragement to withdraw from that service by reason of the smallness of the fines that towns have power to impose for such refusal:

It is therefore ordered, that henceforth it shall be lawful for the town of Boston to impose the fine of ten pounds; and for all other towns to impose the fine of five pounds upon every such person, being legally chosen in the respective towns, that shall refuse to serve in the office of a constable in the town where he is chosen, if in his person he be able to execute it:

Power to fine such as refuse the office of constable.

And the selectmen of every town are hereby empowered to order and require the constables to levy the said fines by distress, which shall be to the use of the town. [36, 42, 47, 53, 58.]

Sect. 6. It is ordered, that hereafter no cottage or dwelling place shall be admitted to the privilege of commonage for wood, timber and herbage, or any other the privileges that lie in common in any town or peculiar, but such as already are in being, or hereafter shall be erected by the consent of the town. [1660.]

Townships' privilege.

Sect. 7. It is ordered by this court and the authority hereof, that the following order shall be directed and sent by the clerks of the several shire courts to the constables of the towns within their shire, who are enjoined faithfully to execute the same; and if upon the return made, it doth appear that the selectmen are negligent in executing the laws therein mentioned, the court shall proceed against them by admonition, or fine, as the merit of the case may require, and shall also dispose of single persons, or stubborn children or servants to the house of correction, according to the intent of the law, any law, custom or usage to the contrary notwithstanding.

Sect. 8. Whereas the law published by the honoured General Court, tit. Children and Youth, do require all towns from time to time to dispose of all single persons and inmates within their towns to service, or otherwise:

It is required of the selectmen, that they see that all children and youth, under family government, be taught to read

perfectly the English tongue, have knowledge in the capital laws, and be taught some orthodox catechism, and that they be brought up to some honest employment, profitable to themselves and the commonwealth; and in case of neglect on the part of the family governors, after admonition given them, the said selectmen are required, with the help of two magistrates, or next court of that shire, to take such children or apprentices from them, and place them forth with such as will look more straitly to them.

The neglect whereof, as by sad experience from court to court abundantly appears, doth occasion much sin and profaneness to increase among us, to the dishonour of God, and the ensnaring of many children and servants, by the dissolute lives and practises of such as do live from under family government, and is a great discouragement to those family governors, who conscientiously endeavour to bring up their youth in all christian nurture, as the laws of God and this commonwealth doth require:

These are therefore in his majesty's name, to require you to acquaint the selectmen of your town, that the court doth expect and will require, that the said laws be accordingly attended, the prevalency of the former neglect notwithstanding: and you are also required to take a list of the names of those young persons within the bounds of your town, and all adjacent farms though out of all town bounds, who do live from under family government, viz. do not serve their parents or masters, as children, apprentices, hired servants, or journeymen ought to do, and usually did in our native country, being subject to their commands and discipline; and the same you are to return to the next court to be held at on the day of and hereof you are to make a true return under your hand, and not to fail.

Sect. 9. Whereas in the law, tit. Townships, the several towns, and selectmen of the said towns, have power to impose penalties as the law directs; and whereas many constables question whether it be their duty to serve warrants from the selectmen for persons to appear before them, and to levy fines; for the removal of such doubts, as an addition to the said law:

This court doth order and require, that all constables respectively shall serve all warrants from the selectmen, and levy all such fines as shall be imposed by the said town or selectmen. [1671.]

Sect. 10. Whether if a town see good to implead any person in a course of law, and make their vote to that end, and choose their attorney, it be not sufficient legal attorneyship, and be allowed in court, the said attorney bringing a record of the said order or choice, signed by the hand of the

Question about a town's power resolved.

recorder of the town, though there be no seal as in other letters of attorney? This question is resolved by the court on the affirmative. [May, 1679.]

CHAPTER XCVII.

ACTS RESPECTING THE POWERS AND DUTIES OF TREASURERS.

To keep perfect accompts.

Sect. 1. It is ordered by this court and the authority thereof, that the country treasurer shall from time to time keep exact and perfect books of accompts, of all transactions for the country, and particularly of all debts and dues belonging to the country, either by forfeits, fines, rates, gifts, legacies, rents, customs, impositions or otherwise, as by whales, shipwrecks, and things of like nature, where the owner is not known, and the country may claim a privilege or common right unto, as also of all his payments and disbursements for the country's use, which he shall not make but by virtue of some settled custom, law or order of this court, or by special order of this court, or of the council, nor shall he make any payment to any person indebted to the country till such person either pay his debt, or defaulk so much as is due to the country.

How to disburse.

County treasurers, how chosen.

Sect. 2. And it is further ordered, that henceforth there shall be treasurers annually chosen in every county by the freemen thereof, who shall give in their votes in each town on the day of voting for nomination of magistrates, which shall be sent sealed up by the same person to the shire meeting, and there opened before the commissioners, who shall certify the county courts under their hands the name of the person chosen: provided no clerk or recorder of any county court shall be chosen treasurer for the county.

No clerk of court to be treasurer.

To pay the charge of the county.

And the said treasurers shall from time to time keep exact and perfect books of accompts of all transactions of the county, and particularly of all debts and dues belonging to the county, either by forfeits, fines, rates, gifts, legacies, rents, customs or otherwise, as also all his disbursements for the charges of the county courts, shire commissioners, with all other peculiar charges of the county, which he shall pay by order of the county court, except the twenty pounds due to the major of the regiment for the year of publick ex-

ercise, which shall be paid by the country treasurer as heretofore.

SECT. 3. And it is ordered; that all fines arising in any county court, or by order of one magistrate or commissioners empowered in criminal cases, shall from time to time be paid in to the treasurer of that county where the delinquent party doth dwell, except only where any person shall be taken in the manner, and immediately censured by authority in any other county where such offence is committed.

All fines arising in the county due to the county.

CHAPTER XCVIII.

ACTS RESPECTING TRIALS.

SECT. 1. IT is ordered; that all causes between party and party shall first be tried in some inferiour court; and that if the party against whom the judgment shall pass shall have any new evidence, or other new matter to plead, he may desire a new trial in the same court upon a bill of review, and if justice shall not be done him upon that trial, he may then come to this court for relief. [1642.]

No cause to be first brought to the general court.

SECT. 2. It is ordered, and by this court declared; that in all actions of law it shall be the liberty of the plaintiff and defendant by mutual consent to choose whether they will be tried by the bench, or by the bench and jury, unless it be where the law upon just reason hath otherwise determined; the like liberty shall be granted to all persons in any criminal case.

Liberty for trial by bench or jury.

SECT. 3. Also it shall be in the liberty of both plaintiff and defendant, and likewise of every delinquent to be judged by a jury, to challenge any of the jurors, and if the challenge be found just and reasonable by the bench or the rest of the jury, as the challenger shall choose, it shall be allowed him, and tales de circumstantibus empanneled in their room.

Liberty to challenge.

SECT. 4. Also children, idiots, distracted persons, and all that are strangers or new comers to our plantation, shall have such allowances, and dispensations in any case, whether criminal or others, as religion and reason require. [1641.]

CHAPTER XCIX.

AN ACT RESPECTING VAGABONDS.

This court being sensible of the increase of profaneness and irreligiousness, by reason of the vagrant and vagabond life of sundry persons, as well inhabitants as foreigners, that wander from their families, relations and dwelling places, from town to town, thereby drawing away children, servants, and other persons, both younger and elder, from their lawful callings and employments, and hardening the hearts of one another against all subjection to the rules of God's holy word, and the established laws of this colony: All which to prevent:

Vagabonds and wandering persons.

This court doth hereby order and enact; that all such persons, wherever they may be found in any place of this jurisdiction, be apprehended by the constable of the said place, with or without further warrant, and brought before the next magistrate; who, if upon examination he shall find them to be such as do not give a good and satisfactory account of such their wandering up and down, shall proceed with and against them as rogues and vagabonds, and cause them to be corporally punished, and sent from constable to constable, until they come to the place of their abode: or in case they will not confess where their abode is within this colony, nor yet voluntarily depart out of the same, then to be sent to the house of correction, there to remain until the next court of that county. [1662.]

CHAPTER C.

AN ACT RESPECTING VOTES.

Liberty of voting or to be silent.

It is ordered, and by this court declared; that all and every freeman, and others authorized by law, called to give any advice, vote, verdict or sentence in any court, council or civil assembly, shall have freedom to do it according to their true judgment and conscience, so it be done orderly and inoffensively for the manner, and that in all cases wherein any freeman or other is to give his vote, be it in point of election, making constitutions and orders, or passing sentence in

any case of judicature, or the like: if he cannot see light or reason to give it positively one way or other, he shall have liberty to be silent, and not pressed to a determinate vote, which yet shall be interpreted and accounted as if he voted for the negative. Neuters accounted on the negative.

And further that whensoever any thing is to be put to a vote, and sentence to be pronounced, or any other matter to be proposed, or read in any court or assembly, if the president or moderator shall refuse to perform it, the major part of the members of that court or assembly shall have power to appoint any other meet person to do it, and if there be just cause, to punish him that should, and would not. [1651.]

CHAPTER CI.

AN ACT RESPECTING USURY.

It is ordered, decreed, and by this court declared; that no man shall be adjudged for the mere forbearance of any debt above eight pound in the hundred, for one year, and not above that rate proportionably for all sums whatsoever, bills of exchange excepted; neither shall this be a colour or countenance to allow any usury amongst us contrary to the law of God. [1641, 43.]

CHAPTER CII.

AN ACT FIXING THE VALUE OF WAMPAMPEAG.

It is ordered; that wampampeag shall pass current in the payment of debts, to the payment of forty shillings, the white at eight a penny, the black at four, so as they be entire without breaches or deforming spots, except in payment of country rates to the treasurer, which no town or person may do, nor he accept thereof, from time to time. [1643, 48, 49, 50.]

CHAPTER CIII.

ACTS RESPECTING WATCHINGS.

Sect. 1. For the better keeping of watches by the constable in the time of peace:

Constable to set the watch.

It is ordered by this court and the authority thereof, that all constable's watches in every town of this jurisdiction shall begin the first of May, and continue till the end of September, upon the penalty of five pounds, to be levied on every constable neglecting the same.

Selectmen to order watches.

And it shall be the care of the constable to see that the watch be so warned, that it may not consist of all, or the greater part youths, but that able men be joined with them, that the watch may be a sufficient watch; unless the selectmen of that town, who have hereby power, shall otherwise order and dispose the said watches, both respecting time, place, number and quality of persons, as to them shall seem most meet.

Constable's charge to the watch.

Night walkers to be secured.

And all inhabitants of this jurisdiction, except such as are by law exempted, shall, according as they are warned to serve the country in the constable's watches, duly and strictly observe the charge given them by the constables; and the constables in every town, from time to time, are hereby enjoined to give in their charge to watchmen, that they duly examine all night walkers after ten of the clock at night, unless they be known peaceable inhabitants, to inquire whither they are going, and what their business is; and in case they give not reasonable satisfaction to the watchmen or constable, then the constable shall forthwith secure them till the morning, and shall carry such person or persons before the next magistrate or commissioner, to give satisfaction for their being abroad at that time of night. And if the watchmen shall find any inhabitant or stranger, after ten of the clock at night, behaving themselves any ways debauchedly, or shall be in drink, the constable shall secure them, by commitment or otherwise, till the law be satisfied.

Watch to cause lights to be put out.

And further, the constable is to give the watchmen in charge, to see all noises in the streets stilled, and lights put out (except upon necessary occasions) for the prevention of danger by fire, as much as may be.

Neglect of watching forfeit 5s.

And every constable shall present to one of the next magistrates or commissioners the name of every person, who shall upon lawful warning refuse or neglect to watch or ward, either in person, or by some other sufficient for that service, and if being convented, he cannot give a just ex-

cuse, such magistrate or commissioner shall grant warrant to any constable to levy five shillings of every offender for such default, the same to be employed for the use of the watch of the same town.

And it is the intent of this law, that every person of able body (not excepted by law) or of estate sufficient to hire another, shall be liable to watch and ward, or to supply by some other, when they shall be thereunto required; and if there be in the same house divers such persons, whether sons, servants or sojourners, they shall all be compellable to watch as aforesaid: provided, that all such as live or keep families at their farms, being remote from any town, shall not be compellable to watch and ward in towns. [1636. 46. 52. 57.] Who compellable to watch.

Sect. 2. The court understanding there is much inequality, in that divers are freed from those watches, whereof all do receive equal benefit, for an explication of the law concerning constable's watches:

Do order, the magistrates, deputies of this court for the time being, elders of churches, the publick sworn officers of the country, with the commission officers in each trained band, be freed from all ordinary watches and wards of the constables, and no other persons, except such persons as shall have special and personal freedom by order of this court; any former grant or custom notwithstanding. [1661.] Persons exempt from constable's watches.

CHAPTER CIV.

ACTS RESPECTING WILLS AND THE DISTRIBUTION OF INTESTATE ESTATES.

Sect. 1. Whereas it is found by experience, that some men dying, having made their wills for the disposing of their estates, that the said wills are concealed, and not proved and recorded; and some others dying intestate, no administration is sought for, nor granted in any legal way, and yet the wives, children, kindred, or some friends of the deceased, or some others do enter upon the lands, and possess themselves of the goods of the said deceased, and the same are many times sold or wasted before the creditors to whom the deceased was indebted know of whom to demand, or how to recover their just debts; for prevention of such unjust and fraudulent dealings:

Wills to be proved next court.

It is ordered by this court and the authority thereof: that if any executor nominated in any will, and knowing thereof, shall not at the next court of the county, which shall be above thirty days after the decease of the party, make probate of any will of any deceased party, or shall not cause the same to be recorded by the recorder or clerk of that county court where the deceased party last dwelt, or if any person whatsoever shall not within the same time take administration of all such goods, as he hath or shall enter upon of any party deceased, or if any person or persons shall alienate or embezzle any lands or goods, before they have proved and recorded the will of the deceased, or taken administration, and brought in a true inventory of all the known lands, goods and debts of the deceased; every such person so administering or executing shall be liable to be sued, and shall be bound to pay all such debts respectively, as the deceased party owed, whether the estate of the deceased were sufficient for the same or not, and shall also forfeit to the country so many sums of five pounds as shall be months betwixt the next court of that county, after the death of the party as aforesaid, and the proving of such will, and recording it, or the taking of such administration.

Entering the estate without administration obtained.

Liable to pay all debts.

Five pounds per month for not proving wills.

If executor renounce, the clerk to give notice to court.

And if any person shall renounce his executorship, or that none of the friends or kindred of the deceased party that shall die intestate shall seek for administration of such persons estate, then the clerk of the writs of such town, where any such person shall die, shall, within one month after his decease, give notice to the court of that county to which such town doth belong of such renouncing of executorship, or not seeking of administration, that so the court may take such order therein as they shall think meet, who shall also allow such clerk due recompense for his pains; and if any such clerk shall fail herein, he shall forfeit forty shillings to the treasury for every month's default. [October, 1649.]

Or forfeit 40s.

Sect. 2. And because many merchants seamen and other strangers, resorting hither oftentimes, dying and leaving their estates undisposed of, and very difficult to be preserved in the interim from one county court to another:

Two magistrates to take probate of wills.

It is therefore ordered, that it shall and may be lawful for any two magistrates, with the recorder or clerk of the county court, meeting together, to allow of any will of any deceased party to the executors or other persons in the will mentioned, so as the will be testified on the oath of two or more witnesses, and also to grant administration to the estate of any person dying intestate within the said county to the next of kin, or to such as shall be able to secure the same for the next of kin, and the recorder or clerk of the court shall inform the rest of the magistrates of the county,

To grant administration.

at the next county court, of such will proved or administration granted, and shall record the same. [1652.]

SECT. 3. And it is ordered, that when the husband or parents die intestate, the county court of that jurisdiction where the party had his last residence shall have power to assign to the widow such a part of his estate as they shall judge just and equal; as also to divide and assign to the children or other heirs their several parts and portions out of the said estate.

County court to divide the estate undisposed.

Provided the eldest son shall have a double portion, and where there are no sons, the daughters shall inherit as copartners, unless the court upon just cause alleged shall otherwise determine. [1641. 49.]

Eldest son a double portion.

SECT. 4. It is ordered by this court and the authority thereof; that when any person dieth intestate, whose estate is insolvent and not sufficient to satisfy the several creditors, and upon information thereof given to the court of that county, the said court shall grant administration as the law directs, and empower commissioners to receive and examine the claims of the several creditors, and give notice by posting up a paper in the most publick place in Boston, and in the town where the person lived, and in the three next adjacent towns, that all persons may come and make their claims and prove their debts within twelve months after publication at farthest (unless upon occasion the county court see cause to give further time) before the said commissioners; and such as they shall find clear and unquestionable debts to receive and allow them; and so the said court shall make a just and due division to all the creditors according to their several proportions, so far as the said estate will extend unto; and whatsoever creditor shall not come in within the time limited as aforesaid to challenge and prove his debt, he shall be debarred from any part of his or her said debt, unless such person afterwards can make some other estate of the deceased not found out before and put into the inventory; and any estate of like nature and not depending and not fully issued, by an equal division among all the creditors according to their proportions, shall be settled according as this order directs, any proceeding or answer in any courts or otherwise thereto contrary notwithstanding. [May, 1677.]

Order for administration to be granted on intestate or insolvent estates.

How to be divided.

SECT. 5. As an addition to the law, tit. Wills, it is ordered by this court and the authority thereof, that the magistrates of each county court in this jurisdiction, being annually chosen by the freemen, shall have full power and authority, as the ordinary in England, to summons any executor or executors appointed to the will of any deceased person, who hath declared his acceptance of that trust by offering said will for probate or otherwise, requiring him, her or them to make and exhibit unto the court, upon oath, a just and true inventory of all the known lands, tenements,

Each county court's power as to probate of wills, &c.

goods and chattels of the deceased; and in case the executor shall neglect or refuse so to do, said court may proceed against such person or persons by imposing of fine or fines upon them, not exceeding ten pounds money per month, for every month's default after the expiration of the time already limited by law for bringing in of inventories; and once within twelve months or oftener, if the said court see meet, they may call such executor or executors to render an account of his or their administration: And it is further ordered, that said court shall have power to receive any information or complaint from any legatee against any executor for detaining any legacy or legacies given by the testator, and to grant summons or process, as is usual in other cases, for the appearance of such executor or executors at day and place assigned by said court, and upon neglect or refusal to appear accordingly, to impose a fine of five pounds on the party or parties so refusing, and to proceed to a hearing of the complaint, and to make their decree and determination thereon, and to grant forth execution for the fulfilling thereof; likewise to hear and determine all cases relating to wills and administrations, and to make their decrees and to grant executions thereupon, allowing to the party aggrieved liberty of appeal to the magistrates of the next court of assistants, such party attending the law as in other cases respecting appeals. [May, 1685.]

Addition to the law, title wills, &c.

SECT. 6. As an addition to the law, tit. Wills, it is ordered by this court and the authority thereof, that the magistrates of each county court in this jurisdiction, being annually chosen by the freemen, shall have full power and authority, as the ordinary in England, to summons any executor or executors appointed to the will of any deceased person, who have declared his or their acceptance of that trust by offering the said will for probate or otherwise, requiring him, her or them to give bond with sufficient sureties for paying all debts or legacies, or to make and exhibit unto the court upon oath a just and true inventory of all the known lands, tenements, goods, and chattels of the deceased; and in case such executor or executors shall neglect or refuse so to do, said court shall proceed against such person or persons by imposing a fine or fines upon them, not exceeding ten pounds per month, for every month's default after the expiration of the time that shall be appointed by the said court for bringing in an inventory; and upon complaint of any creditor or legatary, they shall call any executor or executors to render an account of his or their administration.

SECT. 7. And it is further ordered, that the said court shall have full power to receive any information or complaint from any legatee or creditor against any executor for the detaining any legacy or any legacies given by the testator, or debt due from the said estate, and to grant summons and

process, as is usual in other cases, for the appearance of such executor or executors at days and place assigned by the said court; and upon neglect or refusal to appear accordingly, the court shall proceed to the hearing of the complaint, and to make their decrees and determination thereon, and to grant forth execution for the fulfilling thereof; likewise to hear and determine all cases relating to wills and administrations, and to make their decrees and to grant execution thereupon, allowing to the party aggrieved liberty of appeal to the magistrates of the next court of assistants, such party attending the law, as in other cases respecting appeals: always provided, that where matter of fact is controverted, then either plaintiff or defendant may have a trial thereof by a jury, if it be desired, with liberty of appeal to the next court of assistants, as the law directs, any law, usage, or custom to the contrary notwithstanding. [October, 1685.]

Explanation of, and addition to the law, title Wills.

Sect. 8. As an explanation of, and addition to the law, tit. Wills. Whereas the magistrates or members of the respective county courts have always had power to receive and record all probates of wills, and of granting administrations, &c. it is further ordered by this court and the authority thereof, that each county court within this jurisdiction shall have full power and authority, from time to time, as they shall see cause, to summon any executor or executors of any deceased person's last will and testament, legally proved and on record, to appear before the said court, and to require him, her or them to make and exhibit into the registry of the court a just and true inventory, upon oath, of all the known lands, tenements, goods, and chattels of the deceased, or to give bond with sufficient sureties for the paying of all debts and legacies of the deceased; and in case such executor or executors shall neglect or refuse so to do, for the space of thirty days next after, or such further time that the said court shall to them limit and appoint, the court shall proceed against such persons by imposing a fine or fines upon them, not exceeding ten pounds per month, for every month's default after the expiration of said time so appointed; also upon the complaint of any creditor or legatary, to call any executor to render an account of his or their administration.

Sect 9. And it is further ordered by this court and the authority thereof, that the county courts, respectively, shall have full power to receive any information or complaint, from any legatary or creditor against the executor or executors to the will of any deceased person, for the detaining from him, her, or them, any legacies given by the testator, or debts due from the estate of such testator, and to grant forth summons or protest, together with a copy of said complaint or information annexed, for the appearance of such executor or executors before said court, the said warrant with the

libel annexed to be served fourteen days inclusively before the day appointed for appearance, and it shall be in the power of the court to order the time of hearing at their first sessions, or at any adjournment of said court as to them shall seem meet; and upon neglect or refusal of such person or persons to appear accordingly, the court shall proceed to the hearing of the case, and make their judgment or decree therein, or grant forth executions for the fulfilling thereof: likewise to hear and determine all cases relating unto wills and administrations, and to grant forth executions upon the judgments given therein: always provided, that where matter of fact is controverted, then either plaintiff or defendant, desiring the same before issue be joined, may have a trial thereof by a jury, to be forthwith summoned by warrant from said court, if there be no jury then empanneled, the said party or parties making their whole plea or allegation, as to all matters of fact, at their first hearing and answer, that justice may not be delayed, allowing liberty for any party aggrieved at the judgment and determination of the court or verdict of the jury to appeal to the next court of assistants, giving in their reasons as the law directs in other cases; and every person, before his complaint be received or admitted, shall give caution unto the court to the value of ten pounds in money, to respond all such charges and fees as the court shall award, any law, usage or custom to the contrary notwithstanding: Provided that this law shall not be understood to debar any person or persons from proceeding in the former and usual course of law for the recovery of any debt or legacy due from the estate of the deceased person expressly determined by will.

Former law, tit. Wills, repealed.

SECT. 10. And the law entitled, an addition to the law, tit. Wills, made October the fourteenth, 1685, is hereby repealed. [February, 1685.]

CHAPTER CV.

ACTS RESPECTING WITNESSES.

SECT. 1. IT is ordered, decreed and by this court declared, that no man shall be put to death, without the testimony of two or three witnesses, or that which is equivalent thereunto. [1641.]

SECT. 2. And it is ordered by this court and the authority thereof, that any one magistrate or commissioner authorized

thereunto by the general court may take the testimony of any person of fourteen years of age, or above, of sound understanding and reputation, in any case, civil or criminal, and shall keep the same in his own hands till the court, or deliver it to the recorder, publick notary or clerk of the writs, to be recorded, that so nothing may be altered in it. Testimonies taken before one magistrate.

Provided that where any such witness shall have his abode within ten miles of the court, and there living and not disenabled by sickness or other infirmity, the said testimony so taken out of court shall not be received or made use of in the court, except the witnesses be also present to be further examined about it. Witnesses to appear personally, living within ten miles.

Provided also that in all capital cases, all witnesses shall be present, wheresoever they dwell. And in capital cases.

Sect. 3. And it is further ordered by the authority aforesaid, that any person, summoned to appear as a witness in any civil court between party and party, shall not be compellable to travel to any court or place where he is to give his testimony, except he who shall so summon him shall lay down or give him satisfaction for his travel and expenses outward and homeward; and for such time as he shall spend in attendance in such case, when he is at such court or place, the court shall award due recompense. And it is ordered that two shillings a day shall be accounted due satisfaction to any witness for travel and expenses; and that when the witness dwelleth within three miles, and is not at charge to pass over any other ferry than betwixt Boston and Charlestown, then one shilling and six pence per diem shall be accounted sufficient; and if any witness, after such payment or satisfaction, shall fail to appear to give his testimony, he shall be liable to pay the parties damages upon an action of the case. And all witnesses in criminal cases shall have suitable satisfaction paid by the treasurer, upon warrant from the court or judge before whom the case is tried. Witness to have allowance for charges laid down: 2s. a day. 1s. 6d. a day. Witness not appearing, to pay damage.

Sect. 4. And for a general rule to be observed in all criminal cases, both where the fines are put in certain, and also where they are otherwise:

It is further ordered by the authority aforesaid, that the charges of witnesses in all such cases shall be borne by the parties delinquent, and shall be added to the fines imposed, that so the treasurer having, upon warrant from the court, or other judge, satisfied such witnesses, it may be repaid him with the fine, that so the witnesses may be timely satisfied, and the country not damnified. [May, 1647.] In criminal cases witness to be paid by the treasurer, and levied on the delinquent.

CHAPTER CVI.

ACTS RESPECTING WORKMEN.

SECT. 1. BECAUSE the harvest of hay, corn, hemp and flax comes usually so near together, that much loss can hardly be avoided:

It is therefore ordered by the authority of this court, that the constables of every town, upon request made to them, shall require any artificers or handicraftsmen, meet to labour, to work by the day for their neighbours in mowing, reaping of corn, and inning thereof: Provided that those men whom they work for shall duly pay them for their work:

And that if any person so required shall refuse, or the constable neglect his office herein, they shall each of them pay to the use of the poor of the town double so much as such day's work comes unto:

Provided no artificer or handicraftsman shall be compelled to work as aforesaid for others, whilst he is necessarily attending on the like business of his own. [1646.]

Law prohibiting wine or strong liquors to workmen.

SECT. 2. Whereas there have been sundry and frequent complaints preferred to this court of oppression by excessive wages of workmen and labourers, which notwithstanding the endeavours of this court to redress, such oppressions continue and further increase by a dangerous imposition of such persons on those they work and labour for, by demanding an allowance of liquors or wine every day over and above their wages, without which it is found by too sad experience many refuse to work: Now forasmuch as such a practice of drinking liquors and wine tends much to the rooting young persons in an evil practice, and by degrees to train them up to an habit of excess:

It is therefore ordered by this court and by the authority thereof, and be it hereby enacted, that if any person or persons, after the publication hereof, shall give wine or strong liquors to any workmen or boys that work with them, except in cases of necessity, shall pay twenty shillings for every such offence. [May, 1672.]

CHAPTER CVII.

AN ACT RESPECTING WRECKS OF THE SEA.

It is ordered, decreed, and by this court declared, that if any ships or other vessels, be it friend or enemy, shall suffer shipwreck upon our coasts, there shall be no violence or wrong offered to their persons or goods; but their persons shall be harboured and relieved, and their goods preserved in safety, till authority may be certified and shall take further order therein.

Also any whale, or such like great fish cast upon any shore, shall be safely kept, or improved where it cannot be kept, by the town or other proprietor of the land, till the general court shall take order for the same. [1641, 1647.]

CHAPTER CVIII.

AN ACT RESPECTING WRITS, IN WHAT NAME, &c.

It is ordered by this court and the authority thereof, that henceforth all writs, process and indictments shall, by all magistrates, the secretary, clerks of the several courts and writs, be made and sent forth in his majesty's name: i. e. You are hereby required in his majesty's name, &c. [October, 1662.]

ACTS AND LAWS

PASSED BY THE GREAT AND GENERAL COURT OR ASSEMBLY OF THEIR MAJESTIES'

PROVINCE OF MASSACHUSETTS BAY

IN NEW ENGLAND.

BEGUN AT BOSTON THE EIGHTH DAY OF JUNE, 1692.

GUL. ET MAR. 4.

CHAPTER I.

AN ACT FOR CONTINUING THE LOCAL LAWS, TO STAND IN FORCE TILL NOVEMBER THE TENTH, 1692.

BE it ordered and enacted by the governor, council and representatives convened in general assembly, and it is hereby ordered and enacted by the authority of the same, that all the local laws respectively ordered and made by the late governor and company of the Massachusetts Bay, and the late government of New Plymouth, being not repugnant to the laws of England, nor inconsistent with the present constitution and settlement by their majesties' royal charter, do remain and continue in full force in the respective places, for which they were made and used, until the tenth day of November next; except in cases where other provision is or shall be made by this court or assembly.

And all persons are required to conform themselves accordingly: and the several justices are hereby empowered to the execution of said laws as the magistrates formerly were.

CHAPTER II.

AN ACT SETTING FORTH GENERAL PRIVILEGES.

BE it declared and enacted by the governor, council and representatives, of their majesties' province of the Massachusetts bay in New England, in general court assembled, and by the authority of the same: That all and every the rights and liberties of the people, in this present act mentioned, shall be firmly and strictly holden and observed. That is to say:

That no freeman shall be taken and imprisoned, or be disseized of his freehold, or liberties, or his free customs, or be outlawed, or exiled, or in any manner destroyed, nor shall be passed upon, adjudged, or condemned, but by the lawful judgment of his peers or the law of this province.

Justice nor right shall be neither sold, denied or deferred to any man within this province.

No man shall be twice sentenced for one and the same crime, offence or trespass.

No aid, tax, tallage, assessment, custom, loan, benevolence, or imposition whatsoever, shall be laid, assessed, imposed or levied on any of their majesties' subjects, or their estates, on any colour or pretence whatsoever but by the act and consent of the governor, council and representatives of the people, assembled in general court.

No man of what state or condition soever shall be put out of his lands or tenements, nor be taken, nor imprisoned, nor disherited, nor banished, nor any ways destroyed, without being brought to answer by due process of law.

All trials shall be by the verdict of twelve men, peers or equals, and of the neighbourhood, and in the county or shire where the fact shall arise or grow; whether the same be by indictment, information, or otherwise against the person offending, except in cases where the law of the province shall otherwise provide.

In all capital cases there shall be a grand inquest, who shall first present the offence, and then twelve men of the neighbourhood to try the offender, who, after his plea to the indictment, shall be allowed his reasonable challenges.

In all cases whatsoever, bail by sufficient sureties shall be allowed and taken, unless for treason or felony, plainly and especially expressed, and mentioned in the warrant of commitment.

Provided always, that nothing herein contained shall be understood to extend to discharge out of prison upon bail any person taken in execution for debt, or otherwise legally

sentenced by the judgment of any of the courts of record within this province.

All lands and heritages within this province shall be free from year, day, and waste, escheats and forfeitures, upon the death of parents, or ancestors, natural, casual, or judicial, and that for ever: except in cases of high treason.

CHAPTER III.

AN ACT FOR THE QUIETING OF POSSESSIONS, AND SETTLING OF TITLES.

WHEREAS for the preventing of contests and law suits, referring to housing and lands, there having been a neglect in many persons, in the infancy of these plantations, to observe a legal course and method for the passing and confirmation of sales and alienations.

Ten years quiet possession to give a title.

It was ordered and enacted by the late governor and company of the Massachusetts bay, in the year 1657, that any person or persons, who, either by themselves, or by their grantees, or assigns, before the law made for direction about inheritances, bearing date October the nineteenth, one thousand six hundred fifty-two, have possessed and occupied as his or their own proper right, in fee simple, any houses or lands within this jurisdiction, and shall so continue, whether in their own persons, their heirs or assigns, or by any other person or persons, from, by, or under them, without disturbance, let, suit, or denial, legally made, by having the claim of any person thereto entered with the recorder of the county, where such houses or lands lie, with the names of the persons so claiming, and the quantity and bounds of the lands, and houses claimed; and such claim prosecuted to effect within the term of five years next after the twentieth of May one thousand six hundred fifty and seven, every such proprietor, his or her heirs, and assigns, by virtue of such possession, shall for ever after enjoy the same, without any lawful let, suit, disturbance, or denial, by any after-claim of any person or persons whatsoever; any law, or custom to the contrary notwithstanding;

Which before recited law referring to possession having been found by long experience to be of great benefit and service unto their majesties' subjects within this their province:

It is enacted and ordained by the governor, council and representatives in general court assembled and by the authority of the same, that the said law be and hereby is ratified and confirmed; and to continue and remain in full force as formerly.

And for the further quieting of possessions and settling of titles:

Three years quiet possession to make a title.

It is also enacted and ordained by the authority aforesaid, that every person and persons for the future shall have the like benefit of possession, who by him or themselves, grantees or assigns, were possessed of any houses or lands within this province, in his or their own proper right, upon the first day of this instant month, October; and shall continue in such possession for the space of three years next after, without disturbance or action brought against them.

Savings.

Provided this act shall not be understood to bar the title of any infant, feme covert, or person non compos mentis, imprisoned, or in captivity, who shall have the like time of three years next after such imperfection removed, to pursue their challenge to any houses or lands wherein they have interest or title. And for all persons beyond sea, the time of seven years from the date hereof shall be allowed them to pursue their challenge as aforesaid.

CHAPTER IV.

AN ACT FOR MAKING OF LANDS AND TENEMENTS LIABLE TO THE PAYMENT OF DEBTS.

Sect. 1. Whereas the estates of persons within this province do chiefly consist of houses and lands, which give them credit, some being remiss in paying of their just debts, others happening to die before they have discharged the same:

It is therefore ordained and enacted by the governor, council and representatives, convened in general court, and by the authority of the same:

That all lands or tenements, belonging to any person in his own proper right in fee simple, shall stand charged with the payment of all just debts owing by such person, as well as his personal estate, and shall be liable to be taken in execution for satisfaction of the same, where the debtor or his attorney shall not expose to view, and tender to the officer personal estate sufficient to answer the sum mentioned in

the execution with the charges. And all executions duly served upon any such houses and lands, being returned into the clerk's office of the court, out of which the same issued, and there recorded, shall make a good title to the party, for whom they are so taken, his heirs and assigns for ever. Also where the goods and moveables of any person deceased shall not be sufficient to answer the just debts which the deceased owed, upon representation thereof, and making the same to appear unto the superiour court within the county where such deceased person last dwelt, the said court are hereby empowered to license and authorize the executor or administrator of such person deceased to make sale of all or any part of the houses and lands of the deceased, so far as shall be necessary to satisfy the just debts which the deceased owed at the time of his death. And every executor or administrator, being so licensed and authorized, shall and may, by virtue of such authority, make and execute deeds or conveyances in due form for such houses and lands as they shall so sell, which instruments shall be a good title to the purchaser.

Superiour court may empower executors, administrators to sell land for payment of debts.

Sect. 2. And further it is enacted by the authority aforesaid: that where any person shall make sale or other alienation of any lands or tenements to him of right belonging, with intent to defeat and defraud his creditors of their just debts, not bona fide for good and valuable consideration paid, all such sales and alienations are to be deemed covenous and fraudulent, and shall be of none effect to bar any creditor from such debt as is to him owing.

CHAPTER V.

AN ACT FOR THE ESTABLISHING OF JUDICATORIES, AND COURTS OF JUSTICE, WITHIN THIS PROVINCE.

For the more orderly regulation and establishment of courts of justice throughout this province:

Sect. 1. Be it enacted and ordained by his excellency the governor, council and representatives, convened in general assembly, and it is hereby enacted and ordained by the authority of the same, that all manner of debts, trespasses, and other matters not exceeding the value of forty shillings, wherein the title of land is not concerned, shall and may be heard, tried, adjudged and determined by any of their ma-

Justices' court.

jesties' justices of the peace of this province, within the respective counties where he resides; who is hereby empowered, upon complaint made, to grant a warrant or summons against the party complained of, seven days before the day of trial or hearing, thereby requiring him or them to appear and answer the said complaint, and in case of non-appearance to issue out a warrant of contempt, directed to the constable or other officer, to bring the contemner before him, as well to answer the said contempt, as the plaintiff's action, and if he see cause, to fine the said contemner.

Provided the said fine exceed not ten shillings, to be accounted for to the treasurer of the county, towards the support of the government, and after judgment given in either case, may grant warrants of distress, directed to the constable or other officer to levy the said fine, debt or damage, with charges, upon the defendant's goods and chattels, who by virtue thereof shall expose the same to sale, returning the overplus, if any be, to the defendant. And for want of such distress, to take the body of such defendant into custody, and him to carry and convey to the common gaol of the county or precinct, there to remain, until he hath satisfied the said fine, debt or damage, with charges.

And in case such complainant be nonsuited, or judgment pass against him, then the said justice is hereby empowered to assess to the defendant reasonable costs against such complainant, to be levied and recovered in manner and form above expressed.

And the said justice is hereby required to keep fair records of all his proceedings therein from time to time. Provided always nevertheless, that the party cast shall have liberty to appeal to the next inferiour court of common pleas to be holden for the same county, he entering into recognizance with one sufficient surety in double the value of the debt or damage sued for, and sufficient to answer all costs to prosecute the said appeal there with effect, and to abide the order of the said court, where such case shall be tried, there to receive a final issue. Provided also, that the party appealing shall bring the copies of the whole case to said court, and each party shall be there allowed the benefit of any further plea or evidence. And if upon any such new plea or evidence, the judgment happen to be reversed, the appellant shall have no costs granted for the first trial.

Quarter sessions of the peace.

SECT. 2. Be it further enacted and ordained by the authority aforesaid, that there shall be held and kept in each respective county within this province yearly, at the times and places hereafter named and expressed, four courts or quarter sessions of the peace, by the justices of the peace of the same county, who are hereby empowered to hear and determine all matters relating to the conservation of the peace, and punishment of offenders, and whatsoever is by

them cognizable according to law, that is to say, For the county of Suffolk, at Boston, on the first Tuesdays in March, June, September and December: For the county of Plymouth, at Plymouth, on the third Tuesdays in March, June, September and December: For the county of Essex, at Salem, on the last Tuesdays in June and December; at Ipswich, on the last Tuesday in March; and at Newbury, on the last Tuesday in September: For the county of Middlesex, at Charlestown, on the second Tuesdays in March and December; at Cambridge, on the second Tuesday in September; and at Concord on the second Tuesday of June: For the county of Barnstable, at Barnstable, on the first Tuesdays in April, July, October and January: At Bristol, for the county of Bristol, on the second Tuesdays in April, July, October and January: For the county of York, at York, on the first Tuesdays in April and July; and at Wells, on the first Tuesdays in October and January: And for the county of Hampshire, at Northampton, on the first Tuesdays in March and June; at Springfield, on the last Tuesdays in September and December: And that there be a general sessions of the peace held and kept at Edgartown, upon the island of Capawock, alias Martha's Vineyard, and on the island of Nantucket, respectively, upon the last Tuesday in March, and on the first Tuesday of October yearly, from time to time.

Courts of common pleas.

Sect. 3. And it is further enacted by the authority aforesaid, That at the times and places before mentioned, there shall be held and kept in each respective county and islands before named within this province, an inferiour court of common pleas, by four of the justices of, and residing within the same county and islands respectively, to be appointed and commissionated thereto; any three of whom to be a quorum for the hearing and determining of all civil actions, arising or happening within the same, triable at the common law, of what nature, kind, or quality soever; and upon judgment given therein to award execution.

Appeal to the superiour court.

Review.

Provided nevertheless that it shall be in the liberty of the party, cast in any of the said inferiour courts, to appeal from the verdict and judgment given therein unto the next superiour court, to be held within, or for the same county; the case there to be tried to a final issue. Or by a new process, once and no more, to review the said case in the same court, where it was first tried; and within the space of ten days, after judgment given upon such trial by review, the party aggrieved may bring his writ of error, for a trial of the said case at the next superiour court, to be held within or for the same county, there to receive a final issue and determination.

Provided also, that the party appealing, or bringing any writ of error as aforesaid, shall first enter into recognizance, with sufficient sureties, before one or more of the

justices of the court appealed from, and upon writ of error, before one or more of the justices of the superiour court, in double the value of the debt or damage recovered, that he will prosecute the same appeal or writ respectively with effect, and abide the order of the court; no appeal to be admitted after the time of the court's sitting, nor after execution granted; and the party appealing to bring the copies of the whole case unto the superiour court, where each party shall be allowed the benefit of any new and further plea and evidence. And if upon any such new plea and evidence, the judgment happen to be reversed, the appellant shall have no cost granted him for the first trial.

Provided also that every appellant as aforesaid shall give in a declaration, briefly setting forth the reasons of his appeal, unto the clerk of the court appealed from, fourteen days inclusively before the sitting of that court, where such appeal is to be tried.

Superiour court.

Sect. 4. And it is further enacted by the authority aforesaid, that there shall be a superiour court of judicature over this whole province, to be held and kept annually at the respective times and places hereafter mentioned, by one chief justice, and four other justices, to be appointed and commissionated for the same; three of whom to be a quorum, who shall have cognizance of all pleas, real, personal, or mixt, as well in all pleas of the crown, and in all matters relating to the conservation of the peace, and punishment of offenders, as in civil causes or actions between party and party, and between their majesties, and any of their subjects; whether the same do concern the realty, and relate to any right of freehold and inheritance, or whether the same do concern the personalty, and relate to matter of debt, contract, damage, or personal injury; and also in all mixt actions, which may concern both realty and personalty; and after deliberate hearing, to give judgment, and award execution thereon. The said superiour court to be held and kept at the times and places within the respective counties following: that is to say, Within the county of Suffolk, at Boston, on the last Tuesdays of April and October: Within the county of Middlesex, at Charlestown, on the last Tuesdays of July and January: Within the County of Essex, at Salem, on the second Tuesday of November; and at Ipswich, on the second Tuesday of May: Within the counties of Plymouth, Barnstable and Bristol, at Plymouth, on the last Tuesday of February, and at Bristol, on the last Tuesday of August.

Sect. 5. And be it further enacted by the authority aforesaid, that the trial of all civil causes by appeal, or writ of error, from any of the inferiour courts within the respective counties of York, or Hampshire, the Islands of Capawock,

alias Martha's Vineyard, and Nantucket, shall be in the superiour court to be held at Boston or Charlestown.

Court of assize and general gaol delivery.

SECT. 6. And further it is enacted, that when, and in what county soever, the said superiour court shall sit, the justices thereof shall hold a court of assize and general gaol delivery for the said county, at the same time, as occasion shall be. And there shall be held and kept a court of assize and general gaol delivery, for the respective counties and places of York, Hampshire, the Islands of Capawock, alias Martha's Vineyard, and Nantucket, within the same from time to time, as the governor and council, advising with the justices of the superiour court, shall direct and appoint, according as occasion may be.

Plaintiff's liberty to begin his suit in the inferiour or superior court.

SECT. 7. And it is further enacted by the authority aforesaid, that it shall be in the liberty of any plaintiff to begin his suit, either in the inferiour or superiour court, at his pleasure; and where the original process is made out of the superiour court, the party cast shall have liberty to review his case in the said superiour court, once and no more. Provided nevertheless, that none of the said inferiour courts shall receive any action under the value of forty shillings; nor shall any action under the value of ten pounds be brought into the superiour court, unless where freehold is concerned, or upon appeal.

No action under ten pounds to come originally to the superiour court.

Matters of fact to be tried by a jury.

SECT. 8. And it is further enacted by the authority aforesaid, that all matters and issues in fact arising, or happening within the said province, shall be tried by twelve good and lawful men of the neighbourhood. And that no person or persons shall be chosen and returned to serve upon any such jury, but such as shall have a real estate of freehold worth forty shillings per annum, or personal estate worth fifty pounds. And for the more equal returning and appearance of jurors to serve in the several courts,

Jurors how to be chosen.

SECT. 9. It is enacted by the authority aforesaid, that the clerk of each court respectively, in convenient time before the sitting of such court, shall issue out warrants directed to the constables of the several towns within the county, or jurisdiction of said court, or the most principal of them, to assemble the freeholders and other inhabitants of each several town, qualified as aforesaid, to serve as jurors; requiring them to choose so many good and lawful men as the warrant shall direct for grand and petit jurors to serve at such court, and the constable shall summon the persons so chosen, to attend accordingly, at the time and place appointed; and make timely return of his warrant unto the clerk that granted the same. And no person serving as a justice, juror, witness, or otherwise, shall be obliged to use any other ceremony in taking of their respective oaths, than lifting up the hand as has been accustomed.

All processes and writs to issue forth in their majesties' names.

Sect. 10. And be it further enacted by the authority aforesaid, that all processes and writs shall issue out of the clerk's office of the said respective courts in their majesties' names, under the seal of the said office, and signed by the clerk, and be directed to the sheriff or marshal of the county, his under sheriff or deputy. And where the sum sued for is under ten pounds, to direct also to the constable of the town.

Town clerk to grant attachments for cases triable before one justice, and summons for witnesses.

Provided nevertheless, that replevins, summons and attachments for any matter or cause triable before one justice of the peace, and summons for witnesses in civil cases, may be granted by the town clerk, and directed to the constable of such town, or to the party to be summoned for witness. And the clerk of each town respectively within this province is hereby empowered to make and grant such writs and processes as aforesaid; and the constable or constables of such town are required to execute them. And all processes for appearance, as well in the inferiour court of pleas, as the superiour court of judicature, shall be served and executed fourteen days before the sitting of such court, wherein such writs shall be returnable; and that all proper original processes in the said courts shall be summons, capias or attachment. And in case upon any such summons duly served, and affidavit thereof made in court, the defendant do not appear by himself or his attorney lawfully authorized, judgment shall pass against him by default.

Justices of courts to make necessary rules and orders.

Sect. 11. And it is further enacted and declared by the authority aforesaid, that the justices of the said several courts be, and hereby are empowered to make necessary rules and orders for the more orderly practising and proceeding in said courts; and that no summons, process, writ, judgment, or other proceeding in courts, or course of justice, shall be abated, arrested or reversed upon any kind of circumstantial errors or mistakes, where the person and case may be rightly understood and intended by the court, nor through defect or want of form only. And all writs, processes, declarations, pleas, answers, replications and entries in all the said courts, shall be in the English tongue and no other. And that it shall be in the liberty of every plaintiff or defendant, in any of the said courts, to plead and defend his own cause in his proper person, or with the assistance of such other as he shall procure, being a person not scandalous or otherwise offensive to the court.

Court of chancery.

Sect. 12. And it is hereby further enacted by the authority aforesaid, that there be a high court of chancery within this province, who shall have power and authority to hear and determine all matters of equity of what nature, kind or quality soever, and all controversies, disputes and differences arising betwixt co-executors, and other matters proper and cognizable to said court, not relievable by com-

mon law; the said court to be holden and kept by the governor, or such other as he shall appoint to be chancellor, assisted with eight or more of the council, who may appoint all necessary officers to the said court; which said court shall sit and be held at such times and places as the governor or chancellor for the time being shall from time to time appoint.

Provided nevertheless, that the justices in any of the courts aforesaid, where the forfeiture of any penal bond is found, shall be and hereby are empowered to chancer the same unto the just debt and damages.

Provided also, that either party not resting satisfied with the judgment or sentence of any of the said judicatories or courts in personal actions, wherein the matter in difference doth exceed the value of three hundred pounds sterling, and no other, may appeal unto their majesties in council, such appeal being made in time, and security given according to the directions in the charter in that behalf. Appeal to their majesties in council.

SECT. 13. And it is further enacted by the authority aforesaid, that two shillings per diem shall be accounted due satisfaction to any witness for his travel and expenses, and no more to be allowed in civil causes; and if such witness live within three miles of the place of the courts sitting whereto he is summoned, and be not to pass any ferry, then one shilling and sixpence per diem shall be accounted sufficient: and if any person or persons upon whom any process out of any court of record shall be served, to testify or depose concerning any cause or matter depending in any of the same courts, and having tendered unto him or them such reasonable sums of money for his or their costs and charges, as, having regard to the distance of the places, is necessary to be allowed in that behalf, do not appear according to the tenor of the process, having no lawful or reasonable let or impediment to the contrary, that then the party so making default shall for every such offence lose and forfeit forty shillings, and shall yield such further recompense to the party grieved, as by the discretion of the justices of the court out of which such process issued, shall be awarded according to the loss and hinderance that the party which procured the said process shall sustain by reason of the non-appearance of the said witness or witnesses; the said several sums to be recovered by the party so grieved, against the offender or offenders, by action of debt, bill, plaint, or information in any of their majesties' courts of record, in which no wager of law, essoign or protection to be allowed. Witnesses allowance. Penalty for non-appearance.

SECT. 14. It is further declared and enacted by the authority aforesaid, that every justice of the peace may grant summons, capias or attachment in all civil actions triable before him. Justices may grant summons, capias or attachment.

CHAPTER VI.

AN ACT FOR THE BETTER SECURING THE LIBERTY OF THE SUBJECT, AND FOR PREVENTION OF ILLEGAL IMPRISONMENT.

For the speedy relief of all persons imprisoned for criminal, or supposed criminal matters, in such cases where by law they are bailable,

Sect. 1. Be it enacted by the governor, council, and representatives in general assembly convened, and it is enacted by the authority of the same, that whensoever any person or persons shall bring any habeas corpus directed unto any sheriff or sheriffs, gaoler, minister or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under officers, under keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under officers, under keepers or deputies, shall, within three days after the service thereof as aforesaid, (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge, to which he shall be brought according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ, and bring, or cause to be brought the body of the party so committed or restrained, unto, or before the chief justice, or any other of the justices of the superiour court; and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days, after such the delivery aforesaid, and not longer.

Writs of habeas corpus within three days after service to be returned; and the body brought, if within twenty miles, &c.

And to the intent that no sheriff, gaoler, or other officer, may pretend ignorance of the import of any such writ,

Sect. 2. Be it enacted by the authority aforesaid, that all such writs shall be signed by the person that awards the

same; and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason plainly expressed in the warrant of commitment, in the vacation time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict, or in executio by legal process, or any one on his or their behalf, to appeal or complain to one or more of their majesties' justices of the superiour court, and the said justice or justices, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made, that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an habeas corpus under the seal of the said court, to be directed to the officer or officers, in whose custody the party so committed or detained shall be, returnable immediately before the said court, justice, or justices; and upon service thereof as aforesaid, the officer or officers, his or their under officer, or under officers, under keeper, or under keepers, or deputy, in whose custody the party is so committed or detained, shall within the times respectively before limited bring such prisoner or prisoners before the said justice, before whom the said writ is made returnable, and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment and detainer, and thereupon within two days after the party shall be brought before the said court, justice or justices, the said court, or justice, before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum, according to their discretions, having regard to the quality of the prisoner, and nature of the offence, for his or their appearance in the said superiour court the term following, or at the next assizes, sessions or general gaol delivery within or for such county, or place where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require; and then shall certify the said writ, with the return thereof, and the said recognizance or recognizances, into the said court where such appearance is to be made; unless it shall appear unto the said court or justice, that the party so committed is detained upon a legal process, order or warrant out of some court that hath jurisdiction of criminal matters, or by some warrant, signed and sealed with the hand and seal of any of the said justices, or some justice or justices of the

Writs of habeas corpus and the proceedings thereon in vacation time.

peace for such matters or offences, for the which by the law the prisoner is not bailable.

Persons neglecting two terms to pray a habeas corpus shall have none in vacation time, in pursuance of this act.

SECT. 3. Provided always, and be it enacted, that if any person shall have wilfully neglected by the space of two whole terms after his imprisonment to pray a habeas corpus for his enlargement, such person so wilfully neglecting shall not have any habeas corpus to be granted in vacation time, in pursuance of this act.

Officers, how to be proceeded against for not obeying such writs.

SECT. 4. And be it further enacted by the authority aforesaid, that if any officer or officers, his or their under officer or under officers, under keeper or under keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners, according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver to the person so demanding a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly, all and every the head gaolers and keepers of such prisons, and such other person in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved the sum of fifty pounds; and for the second offence, the sum of one hundred pounds, and shall and is hereby made incapable to hold or execute his said office; the said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information in any court of record, wherein no essoign, protection, privilege, injunction, wager of law, or stay of prosecution by non vult ulterius prosequi or otherwise shall be admitted or allowed; and any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

Persons set at large not to be recommitted but by order of court.

SECT. 5. And for the prevention of unjust vexation by reiterated commitments for the same offence, be it enacted by the authority aforesaid, that no person or persons, which shall be delivered or set at large upon any habeas corpus, shall at any time hereafter be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause; and if any other person or persons shall knowingly, contrary to this act, recommit or imprison, or knowingly

procure or cause to be recommitted or imprisoned for the same offence, or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved the sum of two hundred pounds, any colourable pretence, or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

Persons committed for treason or felony shall be indicted the next term or let to bail.

SECT. 6. Provided always, and be it further enacted, that if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of oyer and terminer or general gaol delivery, to be brought to his trial, shall not be indicted some time to the next term, sessions of oyer and terminer or general gaol delivery after such commitment, it shall and may be lawful to and for the justices of the superiour court, and justices of oyer and terminer or general gaol delivery, and they are hereby required upon motion to them made in open court, the last day of the term, sessions, or gaol delivery, either by the prisoner, or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the justices, upon oath made, that the witnesses for the king could not be produced the same term, sessions or general gaol delivery; and if any person or persons committed as aforesaid, upon his prayer or petition in open court the first week of the term, or first day of the sessions of oyer and terminer and general gaol delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer, or general gaol delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment. Provided always that nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause; but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody, according to the law, for such other suit.

SECT. 7. Provided always, and be it enacted by the authority aforesaid, that if any of their majesties' subjects shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal, or supposed criminal matter, that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers, unless it be by habeas corpus, or some other legal writ, or where the prisoner is delivered to the constable or other inferiour officer, to carry such prisoner to some common gaol; or where any person is sent by order of any judge of assize, or justice of the peace, to any common work-house, or house of correction, or where the prisoner is removed from one prison or place to another within the same county, in order to his or her trial, or discharge in

due course of law, or in case of sudden fire or infection, or other necessity; and if any person or persons shall, after such commitment aforesaid, make out and sign, or countersign any warrant or warrants for such removal aforesaid contrary to this act, as well he that makes or signs, or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

Penalty &c. for denying an habeas corpus.

SECT. 8. Provided also, and be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their habeas corpus; and if the said justices for the time being, or any of them, in or out of court, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of habeas corpus by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved, the sum of one hundred pounds, to be recovered in manner aforesaid.

Prosecution for offences, within what time to be made.

SECT. 9. Provided always, and be it enacted, that no person or persons shall be sued, impleaded, molested or troubled for any offence against this act, unless the party offending be sued or impleaded for the same within two years at the most after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison, and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

And to the intent no person may avoid his trial at the assizes, or general gaol delivery, by procuring his removal before the assizes at such time as he cannot be brought back to receive his trial there,

SECT. 10. Be it enacted, that after the assizes proclaimed for or within that county where the prisoner is detained, no person shall be removed from the common gaol, upon any habeas corpus granted in pursuance of this act; but upon any such habeas corpus shall be brought before the justices of assize in open court, who are thereupon to do what to justice shall appertain.

Provided nevertheless, that after the assizes are ended, any person or persons detained may have his or her habeas corpus according to the direction and intention of this act.

SECT. 11. And be it also enacted by the authority aforesaid, that if any information, suit, or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general

issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter, being pleaded, had been good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit, or action; and the said matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alleged the said matter in bar or discharge of such information, suit, or action.

CHAPTER VII.

AN ACT FOR THE REVIVING OF AN ACT FOR CONTINUING OF THE LOCAL LAWS. AND ONE OTHER ACT, FOR SENDING OF SOLDIERS TO THE RELIEF OF THE NEIGHBOURING PROVINCES AND COLONIES.

WHEREAS, at the session of this court in June last past, an act was made, entitled an act for continuing the local laws to stand in force, till November the tenth, one thousand six hundred ninety and two, which act is near expired; and forasmuch as provision in many cases is not yet made.

SECT. 1. Be it therefore ordained by the governor, council, and representatives in general court assembled, and by the authority of the same, that the said act and every part of it be and hereby is revived and continued in full force to all intents and purposes, from and after the said tenth day of November, and shall so continue until the general assembly shall take further order.

And whereas at the aforesaid session one other act was made, entitled an act for transporting of part of the militia of the province or obliging them to march to the relief of the neighbouring provinces or colonies, which act is also near expired; and forasmuch as in this time of war there may happen frequent occasions for relief to be given unto the neighbouring provinces,

SECT. 2. It is therefore further enacted by the authority aforesaid, that the said act and every part of it be and hereby is revived and continued in full force to all intents and purposes, from and after the expiration of the six months in said act mentioned, and shall so continue unto the first day of the sessions of this court, which shall be in May next, and no longer.

CHAPTER VIII.

AN ACT FOR THE SETTLEMENT AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

WHEREAS estates in these plantations do consist chiefly of lands, which have been subdued and brought to improvement by the industry and labour of the proprietors, with the assistance of their children, the younger children generally having been longest and most serviceable unto their parents in that behalf, who have not personal estate to give out unto them in portions, or otherwise to recompense their labour,

Persons seized of lands in fee simple may dispose of the same by will, &c.

SECT. 1. Be it therefore enacted and ordained by the governor, council and representatives convened in general court or assembly, and it is ordained by the authority of the same, that every person lawfully seized of any lands, tenements, or hereditaments within this province, in his own proper right in fee simple, shall have power to give, dispose, and devise, as well by his last will and testament in writing, as otherwise by any act executed in his life, all such lands, tenements, and hereditaments to and among his children or others, as he shall think fit at his pleasure; and if no such disposition, gift or devise be made by the owner of any such lands, tenements, and hereditaments, the same shall be subject to a division, with his personal estate, and be alike distributed, according to the rules herein after expressed for intestate estates. And when and so often as it shall happen, that any person dies intestate, administration of such intestate's goods and estate shall be granted unto the widow or next of kin to the intestate, or both, as the judge for probate of wills and granting of administrations shall think fit, who shall thereupon take bond with sureties in manner as is directed by the statute of the twenty-second and twenty-third of Charles the second; and shall and may proceed to call such administrators to account for and touching the goods of the intestate; and upon due hearing and consideration thereof, debts, funeral, and just expenses of all sorts being first allowed, the said judge shall, and hereby is fully empowered to order and make a just distribution of the surplusage, or remaining goods and estate, as well real as personal, in manner following, that is to say, one third part of the personal estate to the wife of the intestate for ever, besides her dower or thirds in the houses and lands during life, where such wife shall not be otherwise endowed before marriage; and all the residue of the real and personal estate by equal portions to and among his children, and such as shall

Administration to the estate of intestates, how to be granted.

Distribution of intestate estates.

legally represent them, if any of them be dead, other than such children, who shall have any estate by settlement of the intestate in his life time equal to the others' shares; children advanced by settlement, or portions not equal to the others' shares, to have so much of the surplusage as shall make the estate of all to be equal, except the eldest son then surviving, where there is no issue of the first born or of any other elder son, who shall have two shares, or a double portion of the whole; and where there are no sons, the daughters shall inherit as coparceners; the division of the houses and lands to be made by five sufficient freeholders upon oath, or any three of them, to be appointed and sworn by the judge for that end; unless where all the parties interested in any estate, being legally capable to act, shall mutually agree of a division among themselves, and present the same in writing under their hands and seals; in which case, such agreement shall be accepted and allowed for a settlement of such estate, and be accounted valid in law, being acknowledged by the parties subscribing before the judge, and put upon record.

Houses and lands not capable of division, to be ordered unto the eldest son, he paying out proportionable parts to the other children.

Provided nevertheless, that where any estate in houses and lands cannot be divided among all the children, without great prejudice to, or spoiling of the whole, being so represented and made to appear unto the said judge, the judge may order the whole unto the eldest son, if he accept it, or to any other of the sons successively, upon his refusal; he paying unto the other children of the deceased their equal and proportionable parts or shares of the true value of such houses and lands, upon a just appraisement thereof, to be made by three sufficient freeholders upon oath. to be appointed and sworn as aforesaid, or giving good security to pay the same in some convenient time, as the said judge shall limit, making reasonable allowance in the interim, not exceeding six per cent. per annum. And if any of the children happen to die before he or she come of age, or be married, the portion of such child deceased shall be equally divided among the survivors.

In case there be no children nor legal representative of them, the estate to be allotted to the wife and next of kin.

Sect. 2. And in case there be no children, nor any legal representatives of them, then one moiety of the personal estate shall be allotted to the wife of the intestate for ever, and one third of the real estate for term of life; the residue, both of the real and personal estate, equally to every of the next of kin of the intestate in equal degree, and those who legally represent them; no representatives to be admitted among collaterals after brothers' and sisters' children. And if there be no wife, all shall be distributed among the children; and if no child, to the next of kin to the intestate in equal degree, and their legal representatives as aforesaid, and in no other manner whatsoever. And every one, to whom any share shall be allotted, shall give bond

with sureties before the said judge of probate, if debts afterwards be made to appear, to refund and pay back to the administrator his or her rateable part thereof, and of the administrator's charges; the widow's thirds or dower in the real estate, at the expiration of her term, to be alike divided as aforesaid, saving to any person aggrieved at any order, sentence or decree made for the settlement and distribution of any intestate estate, their right of appeal unto the governor and council, every person so appealing, giving security to prosecute the appeal with effect.

Right of appeal saved. See explanatory act 4 W. & M.

Executors to cause probate of wills to be made in thirty days next after the testator's death.

Penalty for neglect.

Upon refusal, administration to be committed, cum testamento annexo.

Executors by wrong.

Sect. 3. Be it further enacted by the authority aforesaid, that if any executor or executors of the will of any person deceased, knowing of their being so named and appointed, shall not, within the space of thirty days next after the decease of the testator, cause such will to be proved and recorded in the register's office of the same county where the deceased person last dwelt, or present the said will, and declare his or their refusal of the executorship, every executor so neglecting of his or her trust and duty in that behalf, without just excuse made and accepted for such delay, shall forfeit the sum of five pounds per month, from and after the expiration of the said thirty days, until he or they shall cause probate of such will to be made, or present the same as aforesaid; every such forfeiture to be had and recovered by action or information in the inferiour court of pleas in the same county, and to be disposed of, one moiety thereof to the use of the poor of the town where the deceased person last dwelt, and the other moiety to him or them that shall inform and sue for the same. And upon any such refusal of the executor or executors, the judge shall commit administration of the estate of the deceased, cum testamento annexo, unto the widow or next of kin to the deceased, and upon their refusal, to one or more of the principal creditors, as he shall think fit.

Sect. 4. And if any person or persons shall alienate or embezzle any of the goods or chattels of any person deceased, before he or they have taken out letters of administration, and exhibited a true inventory of all the known estate of the party deceased, every person or persons so acting shall stand chargeable and be liable to the actions of the creditors and other persons grieved, as being executors in their own wrong. And the judge shall cause a citation to be made out unto the widow, or next of kin; and upon their neglect of appearance or refusal, may commit administration of any such estate to some one or more of the chief creditors, if accepted by them, or others, as he shall think fit, upon their refusal.

CHAPTER IX.

AN ACT FOR PREVENTION OF FRAUDS AND PERJURIES.

For prevention of many fraudulent practices, which are commonly endeavoured to be upheld by perjury, and subornation of perjury,

Sect. 1. Be it enacted and ordained by the governor, council and representatives, convened in general court, and by the authority of the same, that from and after the last day of December in this present year one thousand six hundred ninety and two, all leases, estates, interests of freehold, or term of years, or any uncertain interest of, in, or out of any messuages, lands, tenements or hereditaments, made or created by livery and seisin only, or by parole, and not put in writing and signed by the parties so making or creating of the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not either in law or equity be deemed or taken to have any other or greater force or effect; any consideration for making any such parole leases or estates, or any former law or usage to the contrary notwithstanding.

Parole leases and interests of freehold shall have the force of estates at will only.

Except nevertheless all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord, during such term, shall amount unto two third parts at the least of the full improved value of the thing demised.

Except leases not exceeding three years, &c.

And moreover, that no leases, estates or interests, either of freehold or term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall at any time after the said last day of December, be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law.

No leases or estates of freehold to be granted or surrendered by word.

Sect. 2. And be it further enacted by the authority aforesaid, that from and after the said last day of December, no action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning

Promises and agreements by parole.

them, or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

Devises of lands to be in writing and attested by three or four witnesses.

SECT. 3. And be it further enacted by the authority aforesaid, that from and after the said last day of December, all devises and bequests of any lands or tenements, shall be in writing, and signed by the party so devising the same, or by some other person in his presence and by his express direction, and shall be attested and subscribed in the presence of the said devisor, by three or four credible witnesses, or else shall be utterly void and of none effect.

How the same shall be revocable.

And moreover, no devise in writing of lands, tenements or hereditaments, or any clause thereof, shall at any time after the said last day of December, be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same by the testator himself, or in his presence, and by his direction and consent; But all devises and bequests of lands and tenements shall remain and continue in full force until the same be burnt, cancelled, torn, or obliterated by the testator, or his direction in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of three or four witnesses, declaring the same, any former law or usage to the contrary notwithstanding.

All declarations or creations of trust to be in writing.

SECT. 4. And be it further enacted by the authority aforesaid, that from and after the said last day of December, all declarations or creations of trusts, or confidences of any lands, tenements or hereditaments, shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect.

Trusts arising, transferred or extinguished by implication of law excepted.

Provided alway, that where any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this act had not been made, any thing herein before contained to the contrary notwithstanding.

Assignments of trust shall be in writing.

SECT. 5. And be it further enacted, that all grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same by such last will or devise, or else shall be utterly void and of none effect.

Contract for sale of goods for ten pounds or more.

Sect. 6. And be it further enacted by the authority aforesaid, that from and after the said last day of December, no contract for the sale of any goods, wares and merchandizes, for the price of ten pounds, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

And for prevention of fraudulent practices in setting up nuncupative wills, which have been the occasion of much perjury,

Nuncupative will not to be good for above the value of 30l. that is not proved by the oaths of three witnesses.

Sect. 7. Be it enacted by the authority aforesaid, that from and after the aforesaid last day of December, no nuncupative will shall be good where the estate thereby bequeathed shall exceed the value of thirty pounds, that is not proved by the oaths of three witnesses, at the least, that were present at the making thereof, nor unless it be proved that the testator at the time of pronouncing the same did bid the persons present, or some of them, bear witness that such was his will, or to that effect, nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or their habitation or dwelling, or where he or she hath been resident for the space of ten days or more next before the making of such will, except where such person was surprised or taken sick being from his own home, and died before he returned to the place of his or her dwelling.

No testimony to be received to prove such will after six months except,&c.

Sect. 8. And be it further enacted, that after six months passed after the speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the said will.

Probate of nuncupative wills.

Sect. 9. And be it further enacted, that no letters testamentary or probate of any nuncupative will shall pass the seal of any court, till fourteen days at the least after the decease of the testator be fully expired; nor shall any nuncupative will be at any time received to be proved, unless process have first issued to call in the widow, or next of kindred to the deceased, to the end they may contest the same, if they please.

No written will to be repealed, but by writing, except,&c.

Sect. 10. And be it further enacted, that no will in writing, concerning any goods, chattels or personal estate, shall be repealed, nor shall any clause, devise or bequest therein be altered or changed by any words, or will by word of mouth only, except the same be in the life of the testator, committed to writing, and read to the testator and allowed

by him, and proved to be so done by three witnesses at the least.

Soldiers' and mariners' wills excepted.

Provided always, that notwithstanding this act, any soldier being in actual military service, or any mariner or seamen being at sea, may dispose of his moveables, wages, and personal estate, as he or they might have done before the making of this act.

CHAPTER X.

AN ACT FOR AFFIRMING OF FORMER JUDGMENTS, AND PROVIDING FOR EXECUTIONS.

Whereas, upon trials had in the late courts of judicature within the several colonies, now by their majesties' royal charter united and incorporated into one province, by the name of the province of the Massachusetts bay, several judgments were obtained, of which execution remains to be done, and some others are depending by appeal, according to the course and practice of the courts then in being,

To the end that there be no failure of justice for want of a due course of law, for the prosecuting, obtaining and levying of the same,

Sect. 1. Be it enacted and ordained by the governor, council and representatives, convened in general court or assembly, and by the authority of the same, that where any appeal as aforesaid is depending, having not been heard, every such appellant shall have a summons from the clerk of the superiour court unto the adverse party, to be served upon him seven days inclusive before the court's sitting, requiring him to appear at the first superiour court, to answer the said appeal, where the same shall be heard and tried according to former usage upon the first evidence and no other, and the judgment to be affirmed or reversed as the case shall there be judged upon trial; and if the appellant neglect to appear, or prosecute his appeal, the former judgment shall be affirmed, and execution awarded accordingly.

Sect. 2. And it is further enacted by the authority aforesaid, that where judgment has passed in any county court or court of commissioners, and execution has not been taken out and levied for satisfying of the same, the party for whom any judgment was so given, his executors or administrators shall have a writ of scire facias from the clerk of the infe-

riour court of pleas, within the same county in which such judgment was obtained, unto the adverse party to appear before the said court, to shew cause (if any there be) why execution should not issue forth; and in case of non-appearance, or that sufficient cause be not shewn to the court, the former judgment shall be affirmed, and execution granted accordingly, the cost of this trial to be added unto the same, provided that the said writ of scire facias be served seven days inclusive before the court's sitting.

No execution, after one year expired, to be granted without a scire facias.

SECT. 3. And be it further enacted by the authority aforesaid, that after one year expired next after giving judgment in any court of record within this province, no execution for such judgment shall be issued out, until a writ of scire facias hath been granted out of the same court, and served upon the adverse party, as is before directed, or left by the sheriff, his under-sheriff or deputy, at his dwelling or place of usual and last abode, requiring him to appear and shew cause (if any he have) why execution ought not to be done; and upon his non-appearance, or not shewing of sufficient cause as aforesaid, the court shall thereupon award execution.

CHAPTER XI.

AN ACT FOR THE PUNISHING OF CRIMINAL OFFENDERS.

Cursing and swearing.

SECT. 1. BE it enacted and ordained by the governor, council and representatives in general court assembled, and by the authority of the same, that if any person or persons shall profanely swear or curse in the hearing of any justice of the peace, or shall be thereof convicted by the oaths of two witnesses, or confession of the party, before any justice or justices of the peace, every such offender shall forfeit and pay unto the use of the poor of the town where the offence shall be committed, the sum of five shillings; and if the offender be not able to pay the said sum, then to be set in the stocks, not exceeding two hours. And if any person shall utter more profane oaths or curses at the same time, and in hearing of the same person or persons, he shall forfeit and pay to the use aforesaid, the sum of twelve pence for every oath or curse after the first, or be set in the stocks three hours.

Presumption.

Provided, that every offence against this law shall be complained of and proved, as aforesaid, within thirty days next after the offence committed.

Drunkenness.

Sect. 2. Further it is enacted by the authority aforesaid, that every person convicted of drunkenness by view of any justice of peace, confession of the party, or oaths of two witnesses, such person so convicted shall forfeit and pay unto the use of the poor of the town where such offence is committed, the sum of five shillings for every such offence; and if the offender be unable to pay the said sum, to be set in the stocks, not exceeding three hours, at the discretion of the justice or justices before whom the conviction shall be. And upon a second conviction of drunkenness, every such offender, over and above the penalty aforesaid, shall be bound with two sureties in the sum of ten pounds, with condition for the good behaviour; and for want of such sureties shall be sent to the common gaol, until he find the same.

Proviso.

Provided, that no person shall be impeached or molested for any offence against this act, unless he shall be thereof presented, indicted or convicted within six months after the offence committed. And the justice or justices, before whom conviction of any of the aforesaid offences shall be, are hereby empowered and authorized to restrain or commit the offender, until the fine imposed for such offence be satisfied, or to cause the same to be levied by distress and sale of the offender's goods by warrant directed to the constable, returning the overplus, if any be; all such fines to be levied within one week next after such conviction, and delivered to the selectmen, or overseers of the poor, for the use of the poor as aforesaid.

Theft.

Sect 3. It is further enacted and ordained by the authority aforesaid, that whosoever shall steal or purloin any money, goods or chattels, being thereof convicted by confession or sufficient witness upon oath, every such offender shall forfeit treble the value of the money, goods or chattels so stolen or purloined, unto the owner or owners thereof, and be further punished by fine or whipping, at the discretion of the court or justices that have cognizance of such offence, not exceeding the sum of five pounds, or twenty stripes. And if any such offender be unable to make restitution, or pay such threefold damages, such offender shall be enjoined to make satisfaction by service; and the prosecutor shall be, and hereby is empowered to dispose of the said offender in service to any of their majesties' subjects, for such term as shall be assigned by the court or justices before whom the prosecution was. And every justice of peace in the county where such offence is committed, or where the thief shall be apprehended, is hereby authorized to hear and determine all offences against this law. Provided, that the damage exceed not the sum of forty shillings.

Burglary and robbery.

SECT. 4. And if any person shall commit burglary, by breaking up any dwelling house, ware-house, shop, mill, malt-house, barn, out-house, or any ship or other vessel lying within the body of the county, or shall rob any person in the field or highways, every person so offending shall upon conviction be branded on the forehead with the letter B; and upon a second conviction shall be set upon the gallows for the space of one hour, with a rope about his neck, and one end thereof cast over the gallows, and be severely whipt, not exceeding thirty-nine stripes; and upon a third conviction of the like offence, shall suffer the pains of death, as being incorrigible; and shall likewise upon the first and second convictions, pay treble damages to the party injured, as is provided in case of theft.

Fornication.

SECT. 5. And it is further enacted by the authority aforesaid, that if any man commit fornication with any single woman, upon due conviction thereof they shall be fined unto their majesties, not exceeding the sum of five pounds, or be corporally punished by whipping, not exceeding ten stripes a piece, at the discretion of the sessions of the peace, who shall have cognizance of the offence. And he that is accused by any woman, to be the father of a bastard child begotten of her body, she continuing constant in such accusation, being examined upon oath, and put upon the discovery of the truth in the time of her travail, shall be adjudged the reputed father of such child, notwithstanding his denial, and stand charged with the maintenance thereof, with the assistance of the mother, as the justices in the quarter sessions shall order, and give security to perform the said order, and to save the town or place where such child is born free from charge for its maintenance, and may be committed to prison until he find sureties for the same; unless the pleas and proofs made and produced on the behalf of the man accused, and other circumstances be such as the justices shall see reason to judge him innocent, and acquit him thereof, and otherwise dispose of the child. And every justice of the peace, upon his discretion, may bind to the next quarter sessions him that is charged or suspected to have begotten a bastard child; and if the woman be not then delivered, the sessions may order the continuance or renewal of his bond, that he may be forth-coming when the child is born.

Reputed father of a bastard.

Power of the justice of peace.

SECT. 6. Further it is enacted by the authority aforesaid, that every justice of the peace, in the county where the offence is committed, may cause to be stayed and arrested all affrayers, rioters, disturbers or breakers of the peace, and such as shall ride, or go armed offensively before any of their majesties' justices, or other their officers or ministers doing their office, or elsewhere, by night or by day, in fear or affray of their majesties' liege people, and such others as shall utter any menaces or threatening speeches; and

upon view of such justice or justices, confession of the party, or other legal conviction of any such offence, shall commit the offender to prison until he find sureties for the peace and good behaviour, and seize and take away his armour or weapons, and shall cause them to be apprized and answered to the king as forfeited; and may further punish the breach of the peace in any person that shall smite or strike another, by fine to the king, not exceeding twenty shillings, and require bond with sureties for the peace; or bind the offender over to answer it at the next sessions of the peace, as the nature or circumstance of the offence may be; and may make inquiry of forcible entry and detainer, and cause the same to be removed; and make out hue and cries after runaway servants, thieves and other criminals.

Breach of the peace.

Forcible entry and detainer.

Lying and libelling.

SECT. 7. And it is further enacted by the authority aforesaid, that if any person or persons of the age of discretion (which is accounted fourteen years, or upwards,) shall wittingly and willingly make or publish any lie or libel, tending to the defamation or damage of any particular person, make or spread any false news or reports, with intent to abuse and deceive others, every such person or persons offending in any of the particulars before mentioned, and being duly convicted thereof, before one or more justices of the peace, shall be fined according to the degree of such offence, not exceeding the sum of twenty shillings for the first conviction, and find sureties for the good behaviour; and if the party be unable to pay the said fine, then to be set in the stocks, not exceeding three hours, or be corporally punished by whipping, at the discretion of the justice or justices, before whom the conviction shall be, according as the circumstances or nature of the offence shall be. And the said justice or justices may restrain and commit the offender, until he pay the said fine, and find sureties for the good behaviour; or may cause the fine to be levied by distress and sale of the offender's goods. And the party or parties grieved or injured, by reason of any of the offences aforesaid, shall or may take his or their suit against any such offender or offenders in any court of record.

Forgery.

Act of parliament.

SECT. 8. It is further enacted by the authority aforesaid, that if any person or persons, upon his or their own head or imagination, or by false conspiracy and fraud with others, shall wittingly, subtly and falsely forge or make, or subtly cause, or wittingly assent to be forged or made, any false deed, conveyance or writing sealed, or the will of any person or persons in writing, to the intent that the state of freehold or inheritance, right, title or interest of any person or persons of, in, or to any lands, tenements or hereditaments, shall or may be molested, troubled, defeated, recovered or charged, or shall, as is aforesaid, forge, make, or cause, or assent to be made, or forged, any obligation, or

bill obligatory, letter of attorney, or any acquittance, release, or other discharge of any debt, accompt, action, suit, demand, or other thing personal; or if any person or persons shall pronounce, publish, or shew forth in evidence, any such false and forged deed, conveyance, writing, obligation, bill obligatory, letter of attorney, acquittance, release or discharge, as true, knowing the same to be false and forged, as is aforesaid, to the intent above remembered, and shall be thereof convicted, either upon action or actions of forger of false deeds, to be founded upon this act at the suit of the party grieved, or otherwise according to the order and due course of law, or upon bill or information, that then every such offender shall pay unto the party grieved his double costs and damages, to be found and assessed in such court where the said conviction shall be, and also shall be set upon the pillory in some market town, or other open place, and there to have one of his ears cut off, and also shall have and suffer imprisonment by the space of one whole year, without bail or mainprise. And the party or parties grieved by reason of any of the offences aforesaid may take his or their suit against any such offender or offenders, in any court of record, where no essoign, injunction or protection shall be allowed the party defendant.

Provided always, and it is enacted by the authority aforesaid, that this act or any thing therein contained shall not extend to charge any judge of probate or register, with any the offences aforesaid, for putting their seal of office to any will to be exhibited unto them, not knowing the same to be false or forged, for writing of the said will or probate of the same, nor to any other person or persons that shall show forth or give in evidence any false or forged writing for true or good, being not party or privy to the forging of the same, nor knowing the same to be false or forged, any thing in this act to the contrary notwithstanding.

Wilful perjury.

Sect. 9. And it is further enacted and ordained by the authority aforesaid, if any person or persons, either by the subornation, unlawful procurement, reward, sinister persuasion, or means of any other, or by their own act, consent or agreement, shall wilfully and corruptly commit any manner of wilful perjury, by his or their deposition in any court of record, or being examined ad perpetuam rei memoriam, that then every person and persons so offending, and being thereof duly convict, or attainted by law, shall for his or their offence lose and forfeit twenty pounds, the one moiety thereof unto their majesties, and the other moiety to such person or persons as shall be grieved, hindered or molested by reason of any such offence, that shall sue for the same by action of debt, bill, plaint, information, or otherwise in any court of record, in the which no wager of law, essoign, protection, or injunction to be allowed, and also to

have imprisonment by the space of six months, without bail or mainprise; and the oath of such person or persons so offending not to be received in any court of record, until such time as the judgment given against the said person or persons shall be reversed by attaint or otherwise; and upon every such reversal, the parties aggrieved to recover his or their damages against all and every such person and persons as did procure the said judgment so reversed, to be given against them or any of them, by action or actions, upon his or their case or cases, according to the course of the common law.

And if it happen the said offender or offenders so offending not to have any goods or chattels to the value of twenty pounds, that then he or they be set on the pillory by the space of one whole hour, in some market town where the offence was committed, or next adjoining to the place where the offence was committed, and to have both his ears nailed, and from thenceforth to be discredited and disabled for ever to be sworn in any court of record, until such time as the judgment shall be reversed.

And all and every person and persons who shall unlawfully and corruptly procure any witness or witnesses, by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever depending, or that shall depend in suit and variance by any writ, action, bill, complaint or information in any court of record, or to testify in perpetuam rei memoriam, every such offender, being thereof duly convict or attainted by law, shall for his or their offence be proceeded against, and suffer the like pains, penalties, forfeitures and disability in all respects as above mentioned.

Sect. 10. And it is further enacted by the authority aforesaid, that all the aforesaid forfeitures and sums of money arising for any offence mentioned in this act, and every branch thereof, and not otherwise disposed of, shall be unto their majesties for and towards the support of the government of this province, and the incident charges thereof.

CHAPTER XII.

AN ACT FOR THE ORDERLY CONSUMMATING OF MARRIAGES.

Sect. 1. Be it ordained and enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that every justice of the peace

within the county where he resides, and every settled minister in any town, shall, and are hereby respectively empowered and authorized to solemnize marriages, within their respective towns and counties, betwixt persons that may lawfully enter into such a relation, having the consent of those whose immediate care and government they are under, and being likewise first published by asking their bans at three several publick meetings in both the towns where such parties respectively dwell, or by posting up their names and intentions at some publick place in each of the said towns, fairly written, there to stand by the space of fourteen days, and producing certificate of such publishment under the hand of the town clerk or constable of such towns respectively.

Justices or ministers respectively to solemnize marriages.

Publishment, how to be made.

And the fee to be paid for every marriage shall be three shillings; and for publishment and certificate thereof, one shilling.

Fee for marriage, &c.

Sect. 2. And be it further enacted, that whoever shall presume to deface or pull down any such publishment, posted up in writing, before the expiration of the time, shall be fined to the use of the poor of the town the sum of ten shillings, being convicted thereof before one or more justices of the peace; and if the party be unable to pay the said fine, then to be set in the stocks one whole hour.

Penalty for pulling down publishments.

And every justice and minister shall keep a particular register of all marriages solemnized before any of them, and make a return thereof at the end of each quarter of a year unto the clerk of the sessions of the peace within the same county, to be by him registered, who is hereby empowered thereto, and shall be paid by every such justice and minister three pence for each marriage so returned.

Marriages to be registered.

Sect. 3. And it is further enacted by the authority aforesaid, that all controversies concerning marriage and divorce shall be heard and determined by the governor and council.

Divorce.

CHAPTER XIII.

AN ACT FOR THE SETTLEMENT AND SUPPORT OF MINISTERS AND SCHOOL-MASTERS.

Sect. 1. Be it ordained and enacted by the governor, council and representatives, convened in general court or assembly, and by the authority of the same, that the inhabi-

tants of each town within this province shall take due care, from time to time, to be constantly provided of an able, learned, orthodox minister or ministers of good conversation, to dispense the word of God to them, which minister or ministers shall be suitably encouraged and sufficiently supported and maintained by the inhabitants of such town. And all contracts, agreements and orders heretofore made, or that shall hereafter be made by the inhabitants of any town within this province respecting their ministers or schoolmasters, as to their settlement or maintenance, shall remain good and valid according to the true intent thereof, the whole time for which they were or shall be made, in all the particulars thereof, and shall accordingly be pursued, put in execution and fulfilled. And where there is no contract and agreement made in any town, respecting the support and maintenance of the ministry, or when the same happens to be expired, and the inhabitants of such town shall neglect to make suitable provision therein, upon complaint thereof made unto the quarter sessions of the peace for the county where such town lies, the said court of quarter sessions shall, and hereby are empowered to order a competent allowance unto such minister, according to the estate and ability of the town, the same to be assessed upon the inhabitants by warrant from the court, directed to the selectmen, who are thereupon to proceed to make and proportion such assessment in manner as is directed for other publick charges, and to cause the same to be levied by the constables of such town, by warrant under the hands of the selectmen, or of the town-clerk by their order.

Contracts and agreements to be made good.

Neglect of making suitable provision for ministers to be redressed by the quarter sessions.

SECT. 2. Be it further enacted by the authority aforesaid, that where any town shall be destitute of a minister qualified as aforesaid, and shall so continue by the space of six months, not having taken due care for the procuring, settling and encouragement of such minister, the same being made to appear upon complaint unto their majesties' justices at the general sessions of the peace for the county, the said court of quarter sessions shall, and hereby are empowered to make an order upon every such defective town, speedily to provide themselves of such ministers as aforesaid, by the next sessions at the furthest; and in case such order be not complied with, then the said court shall take effectual care to procure and settle a minister qualified as aforesaid, and order the charge thereof, and of such minister's maintenance, to be levied on the inhabitants of such town.

The court of quarter sessions to take care that no town be destitute of a minister.

SECT. 3. And it is further enacted by the authority aforesaid, that the respective churches in the several towns within this province shall, at all times hereafter, use, exercise and enjoy all their privileges and freedoms respecting divine worship, church order and discipline, and shall be

Churches to enjoy their privileges and freedoms.

encouraged in the peaceable and regular profession and practice thereof.

School for reading and writing.

Sect. 4. And be it further enacted by the authority aforesaid, that every town within this province, having the number of fifty householders or upwards, shall be constantly provided of a school-master to teach children and youth to read and write; and where any town or towns have the number of one hundred families or householders, there shall also be a grammar school set up in every such town, and some discreet person of good conversation, well instructed in the tongues, procured to keep such school, every such school-master to be suitably encouraged and paid by the inhabitants.

Grammar school.

School-masters to be supported.

And the selectmen and inhabitants of such towns respectively shall take effectual care, and make due provision for the settlement and maintenance of such school-master and masters.

Penalty for neglect.

Sect. 5. And if any town, qualified as before expressed, shall neglect the due observance of this act, for the procuring and settling of any such school-master as aforesaid, by the space of one year, every such defective town shall incur the penalty of ten pounds for every conviction of such neglect, upon complaint made unto their majesties' justices in quarter sessions for the same county in which such defective town lieth, which penalty shall be towards the support of such school or schools within the same county, where there may be most need, at the discretion of the justices in quarter sessions, to be levied by warrant from the said court of sessions in proportion upon the inhabitants of such defective town, as other publick charges, and to be paid unto the county treasurer.

CHAPTER XIV.

AN ACT FOR THE SETTLEMENT OF THE BOUNDS, AND DEFRAYING OF THE PUBLICK AND NECESSARY CHARGES ARISING WITHIN EACH RESPECTIVE COUNTY IN THIS PROVINCE.

Counties to continue as formerly.

Sect. 1. Be it ordained and enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that all counties, as they now lie and are named, continue and remain distinct counties to all intents and purposes in the law whatsoever; and that there be a county treasurer annually chosen for each respective county, being a freeholder within the same, and to be

Choice of county treasurer.

chosen by the votes of the freeholders and other inhabitants of each respective town, duly qualified as is provided by the act for the choice of selectmen, and other town officers, and at the same time, such votes to be given in writing, and sealed up by the constable, by him to be kept and returned unto the next quarter sessions to be held for said county, there to be opened and sorted by such as the court shall appoint, in presence of the justices; and the person having the majority of the said votes shall be treasurer of such county for that year, and be sworn before the said court.

And for the due and equal raising of monies for defraying of the charges arising within each respective county for the necessary repairs and amendment of bridges, prisons, the maintenance of poor prisoners, and all other proper county charges,

County charges how to be defrayed.

SECT. 2. It is further enacted by the authority aforesaid, that when and so often from time to time as there shall be need of raising money for the ends aforesaid in any county, the justices in quarter sessions for such county, receiving information thereof from the county treasurer, shall agree and determine the whole sum to be raised, and each respective town's proportion of the same, as near as may be according to the rule for raising of money for the province charges, and shall issue forth their order unto the selectmen of the respective towns to assess the same upon the inhabitants of such town, each one his due and equal proportion thereof, according to the rule beforementioned, as near as may be, to be paid in money, or equivalent thereto, and to make a distinct list of each person's name and proportion under their hands, and such list commit unto the constable or constables of such town, with a warrant signed by the town clerk, directed unto the said constable or constables, to levy and collect the said assessment, of each one his respective proportion, and to pay in their said collections unto the county treasurer, or his order, within the time set for the same, and to make distress upon every person neglecting or refusing to make payment, and in default of goods or chattels whereon to make distress, to commit the party to the common gaol of the county until he make payment, or otherwise be released by the justices in quarter sessions. And if any person or persons think themselves over-rated in any such assessment, they shall be eased by the assessors, making the same to appear, or in default thereof, by the court of quarter sessions.

Money how to be applied.

Treasurer to account.

SECT. 3. And further it is enacted, that all monies so collected be improved and employed for the ends within-mentioned, as the court of quarter sessions shall from time to time by their order in writing direct and appoint. And the county treasurer in each respective county shall account unto the court of quarter sessions, or whom they shall appoint, for all his receipts and payment.

CHAPTER XV.

AN ACT FOR REGULATING OF TOWNSHIPS, CHOICE OF TOWN OFFICERS, AND SETTING FORTH THEIR POWER.

Bounds of townships to continue as heretofore granted and settled, and to be run, and marks renewed once in three years under a penalty

SECT. 1. BE it ordained and enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that the bounds of all townships shall be, and continue as heretofore granted and settled respectively, and shall be run betwixt town and town, and marks renewed once in three years, by two of the selectmen of each town, or any other two persons whom the selectmen shall appoint, the selectmen of the most ancient town to give notice unto the selectmen of the next adjacent towns, of the time and place of meeting for such perambulation, six days beforehand, on pain of forfeiting five pounds by the selectmen of any town that shall neglect their duty in any of the particulars aforesaid, two thirds thereof unto the use of the poor of such town, and the other third unto the selectmen of any of the next adjacent towns, that shall inform and sue for the same, in the inferiour court of pleas within the same county, to be recovered by action or information.

Proprietors of lands unfenced or in common fields to run the lines once in two years.

SECT. 2. And be it further enacted by the authority aforesaid, that each proprietor of lands lying unfenced, or in any common field, shall once in two years, on six days warning before given him, by the next proprietor or proprietors adjoining, run the lines, make and keep up the bounds between them by sufficient meet stones, on pain that every party so neglecting or refusing, shall forfeit the sum of ten shillings, one half to the party moving, and the other half to the use of the poor of the town, being convented and convicted of such neglect or refusal, before any justice of the peace within the same county, who is hereby empowered to hear and determine the same.

Lands how to be improved.

SECT. 3. And further it is enacted by the authority aforesaid, that the proprietors of the undivided or common lands within each town and precinct in this province, where the same have been heretofore stated, each one's proportion being known, shall, and hereby are empowered to order, improve or divide in such way and manner as shall be concluded and agreed upon by the major part of the interested, the voices to be collected and accounted according to the interests; and the proprietors of all undivided or common lands, not stated and proportioned as aforesaid, shall, and hereby are empowered to manage, improve, divide or dispose of the same as hath been, or shall be concluded and

agreed on by the major part of such proprietors. That no cottage or dwelling place in any town, shall be admitted to the privilege of commonage of woods, timber and herbage, or any other the privileges which lie in common in any town or peculiar, other than such as were erected or privileged by the grant of such town or peculiar before the year one thousand six hundred sixty and one, or that have been since, or shall hereafter be granted by the consent of any town or peculiar.

And whereas it has been a continued practice and custom, in the several towns within this province, annually to choose selectmen or townsmen, for the ordering and managing of the prudential affairs of such town, and other town officers for the executing of other matters and things in the laws appointed by them to be done and performed,

See resolve at the end of this act.

Qualification of voters in town meetings.

Select-men, constables and other town officers to be annually chosen in March.

Town clerk to be under oath.

Constables to summon town officers to be sworn under a penalty.

Persons exempted from serving as constables.

SECT. 4. Be it further ordained and enacted by the authority aforesaid, that the freeholders and other inhabitants of each town, rateable at twenty pounds estate, to one single rate besides the poll, shall some time in the month of March annually meet and convene together, upon notice given by the constable or constables of such town, or such others as the selectmen or townsmen shall appoint, to give notice of such meeting, and the time and place for the same, and by the major vote of such assembly then and there shall choose three, five, seven or nine persons, able and discreet, of good conversation, inhabiting within such town, to be selectmen or townsmen and overseers of the poor, where other persons shall not be particularly chosen to that office, (which any town may do as they shall find it necessary and convenient) as also to nominate and choose a town clerk, who shall be sworn truly to enter and record all town votes, orders, grants and divisions of land, made by such town, and orders made by the selectmen, a commissioner for assessments, constables, surveyors of high-ways, tithing-men, fence-viewers, clerks of the market, sealers of leather, and other ordinary town officers. And the town clerk, or two of the selectmen, shall forthwith make, and give out unto the constable or constables of such town, a list of the names of those that shall be then chosen to the office of town clerk, constables, tithing-men, clerks of the market, sealers of leather, and other officers, of whom an oath is by law required, which constable or constables, within the space of six days at furthest, shall summon each of them respectively to appear before the quarter sessions, if then sitting, or one of the next justices of the peace, to be sworn to the faithful discharge of their respective offices and trust, on penalty of twenty shillings to the use of the poor of the town, to be paid by each constable neglecting of his duty in that behalf, upon conviction thereof before one justice of the peace, and upon non-payment, to be levied by distress; provided that no

person in commission for any office, civil or military, church officer, or member of the house of representatives for the time being, nor any other who has served as constable within the space of seven years before, shall be chosen to the office of constable.

Towns, or selectmen having instructions, to make orders and by-laws, &c.

Orders and by-laws in towns, to be approved by the quarter sessions.

SECT. 5. It is further enacted by the authority aforesaid, that the freeholders and inhabitants qualified as in this act is mentioned in each respective town, in any town meeting, orderly warned according to the usage in such town, or the major part so assembled, or the selectmen having instructions given them in writing by the town for that purpose, be, and hereby are empowered from time to time to make and agree upon such necessary rules, orders and by-laws for the directing, managing and ordering the prudential affairs of such town, as they shall judge most conducing to the peace, welfare and good order thereof, and to annex penalties for the observance of the same, not exceeding twenty shillings for one offence, provided that they be not repugnant to the general laws of the province; and such orders and by-laws being presented unto the justices in quarter sessions, and approved of by them, shall be established and binding to all the inhabitants of such town, and the penalty for breach of any of them by any of the inhabitants to be levied by warrant of distress from any justice of the peace before whom such offender shall be convicted, to the use of the poor of such town.

Penalty to be levied by warrant from a justice.

Selectmen to make assessment for county and town charges.

SECT. 6. And further it is enacted by the authority aforesaid, that the selectmen or townsmen chosen as aforesaid, in each town respectively, be and hereby are empowered to assess the inhabitants and others resident within such town, and the precincts thereof, and the lands and estates lying within the bounds of such town, in just and equal proportion as near as may be unto the county charges, according as they shall receive order from the court of quarter sessions to be held for the same county, and to all town charges, each particular person according to his known ability and estate, such sum and sums as hath or shall be ordered, granted and agreed upon from time to time by the inhabitants in any town meeting regularly assembled, or the major part of those present at such meeting, for the maintenance and support of the ministry, schools, the poor, and for the defraying of other necessary charges arising within the said town, and thereof to make distinct and perfect lists under their hands, or the major part of them, setting down every person's name and several proportion, and shall thereupon make out a warrant to be signed by the said assessors, or the town clerk by their order (who are hereby respectively empowered thereto) directed unto the constable or constables of the said town, for the speedy levying and collecting of such assessments, and to pay in the same unto the se-

Assessor or town clerk to make out a warrant for levying the same.

Distress to be made on delinquents.

lectmen, or to such person as they shall appoint for receiver, within the time thereby prefixed, and to make distress upon all such who shall neglect or refuse to make payment, and for want of goods or chattels whereon to make distress, to seize the person and commit him to the common gaol of the county, there to remain until he pay the sum upon him assessed as aforesaid, unless the same or any part thereof, upon application made unto the quarter session, shall be abated; and if any person think himself over-rated, and make it so appear unto the assessors, he shall be eased; and if they refuse, such person aggrieved may make his application unto the justices in quarter sessions, who are hereby empowered to rectify the same; and all constables, having any such assessment committed unto them, shall settle and issue their accompts thereof with the selectmen, or receiver appointed by them, within three months after their time or year is expired, on pain of forfeiting the sum of twenty shillings per month, for each month's neglect afterward, to the use of the poor of such town, and to be levied by distress upon such delinquent constable's goods, by warrant from one justice of the peace, being convented and convicted of such neglect before him, who is hereby thereto empowered.

Persons over-rated to be eased.

Constables to settle and issue their accompts within three months after the expiration of their year. See act relating to town assessments.

Provided nevertheless, that every constable at the end of every three months shall pay in as aforesaid so much as he shall have collected within that time.

Idle persons and loiterers to be employed.

Upon refusal to labour to be sent to the house of correction.

SECT. 7. And it is further enacted by the authority aforesaid, that the selectmen or overseers of the poor in each town, where there are such chosen and specially appointed for that service, are hereby empowered and ordered to take effectual care that all children, youth, and other persons of able body living within the same town or precincts thereof, not having estates otherwise to maintain themselves, do not live idly, or mispend their time in loitering, but that they be brought up or employed in some honest calling, which may be profitable unto themselves and the publick; and if any person or persons, fit and able to work, shall refuse so to do, but loiter and mispend his or her time, wander from place to place, or otherwise misorder themselves, and thereof be convicted before one or more justices of the peace, such person or persons shall by such justice or justices be sent to the house of correction, and at their entrance be whipped on the naked back by the master of such house, or such other as he shall procure, not exceeding ten lashes, and be there kept to hard labour, until he or she be discharged by such justice or justices, or the quarter sessions of the peace for the same county, and it shall and may be lawful for the overseers of the poor or selectmen in each town, where there are no other persons specially chosen and appointed, to be overseers of the poor; and they are hereby

ordered, with the assent of two justices of the peace, to bind any poor children belonging to such town to be apprentices, where they shall see convenient, a man child until he shall come to the age of twenty-one years, and a woman child to the age of eighteen years, or time of marriage, which shall be as effectual to all intents and purposes, as if any such child were of full age, and by indenture of covenant had bound him or herself.

Poor children to be bound out apprentices.

Sect. 8. And it is further enacted by the authority aforesaid, that every person and persons, except as in this act is before excepted, being duly chosen as aforesaid to serve in the office of constable, who shall refuse to take the oath to that office belonging, and to serve therein, if he be able in person to execute the same, shall pay the sum of five pounds, to the use of the poor of such town, and if in the towns of Boston or Salem, the sum of ten pounds, and shall forthwith declare his acceptance or refusal, and the town shall proceed to a new choice; and if such person refuse to pay down his fine, he shall be convened before the next sessions of the peace, to be held for that county in which such town lieth, who upon certificate under the hand of the town clerk, or two or more of the selectmen, that such person was legally chosen to the office of constable, and shewing no just cause to the sessions for his excuse, the justices shall order a warrant to be signed by the clerk of the peace, directed to any of the constables then in being within such town, to levy the said fine by distress and sale of such offenders goods, returning the overplus (if any be) the said fine to be delivered unto the overseers of the poor, or selectmen, to the use of the poor of such town.

Penalty for not serving in the office of constable.

Sect. 9. And be it further enacted by the authority aforesaid, that if any person or persons come to sojourn or dwell in any town within this province or precinct thereof, and be there received and entertained by the space of three months, not having been warned by the constable, or other person whom the selectmen shall appoint for that service, to leave the place, and the names of such persons, with the time of their abode there, and when such warning was given them, returned unto the court of quarter sessions, every such person shall be reputed an inhabitant of such town, or precincts of the same, and the proper charge of the same, in case through sickness, lameness, or otherwise they come to stand in need of relief, to be borne by such town, unless the relations of such poor impotent person, in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, be of sufficient ability, then such relations respectively shall relieve such poor person, in such manner as the justices of the peace in that county where such sufficient persons dwell shall assess, on pain that every one failing therein shall forfeit twenty shillings for

Persons entertained in any town by the space of three months, and not warned out, to be reputed inhabitants.

Persons of ability, to relieve their poor relations.

every month's neglect, to be levied by distress and sale of such offender's goods by warrant from any two such justices of the peace (quorum unus) within their limits, which shall be employed to the use and relief of such impotent poor person. Provided nevertheless, this act shall not be understood of any persons committed to prison, or lawfully restrained in any town, or of such as shall come, or be sent for nursing or education, or to any physician or surgeon to be healed or cured, but the particular persons who receive and entertain any such shall be the town's security in their behalf, and be obliged to relieve and support them in case of need, upon complaint made to the quarter sessions, who shall accordingly order the same.

Persons warned out of town, to depart in 14 days or else to be sent by the constable.

SECT. 10. And it is further enacted by the authority aforesaid, that any person orderly warned as aforesaid to depart any town whereof he is not an inhabitant, and neglecting so to do by the space of fourteen days next after such warning given, may by warrant from the next justice of the peace be sent and conveyed from constable to constable, unto the town where he properly belongs, or had his last residence, at his own charge, if able to pay the same, or otherwise at the charge of the town so sending him.

Constables to warn town-meetings.

Penalty for neglect.

SECT. 11. And further it is enacted by the authority aforesaid, that when and so often as there shall be occasion of a town meeting for any business of publick concernment to the town there to be done, the constable or constables of such town, by order from the selectmen, or major part of them, or of the town clerk by their order, in each respective town within this province, shall warn a meeting of such town, having order for the same in writing, on pain that every constable neglecting his duty in that respect, and being thereof convicted before one justice of the peace, shall forfeit the sum of twenty shillings, to the use of the poor of such town, and to be levied by distress and sale of such offender's goods, by warrant from such justice of the peace, upon neglect or refusal of payment. And in case the selectmen in any town shall unreasonably deny to call a meeting of the inhabitants of such town, upon any publick occasion thereof, the same being complained of, and made to appear to one of the next justices of the peace within the same county, such justice by his warrant, directed to the constable or constables, may order a meeting of the inhabitants of such town, therein signifying the occasion thereof.

Justice to give warrant for town meeting, in case.

SECT. 12. At a great and general court or assembly of his majesty's province of the Massachusetts-bay, begun and held at Boston, upon Wednesday the 30th of May, 1722, the following resolve was drawn up and passed on a paragraph which relates to the qualifications of voters in town meetings, in the act for regulating of townships and choice of town-officers, made in the fourth year of king William

and queen Mary, viz. whether the words rateable at twenty pounds estate to one single rate besides the poll, are to be understood as the qualification of freeholders, as well as other inhabitants of towns, &c.

Resolved in the affirmative, and that the law ought so to be understood.

CHAPTER XVI.

AN ACT FOR THE EXPLAINING AND ALTERING OF SOME CLAUSES AND SENTENCES, AND THE REPEALING OF SOME OTHERS CONTAINED IN SEVERAL ACTS MADE AND PASSED AT THE SECOND SESSION OF THIS COURT IN OCTOBER LAST.

SECT. 1. BE it enacted by the governor, council and representatives, in general court assembled, and it is enacted and declared by the authority of the same, that whereas in the act, entitled an act for the settling and distribution of the estates of intestates, amongst other things thereby enacted and provided, there is a saving to the party aggrieved at any order, sentence or decree, made for the settlement and distribution of any intestate estate, their right of appeal unto the governor and council,

It is now declared and enacted, that such right of appeal shall to all intents and purposes extend and be taken and construed to extend as well to any other order, sentence, decree or denial, that shall at any time be made and given by the judge of probate, referring to the approbation and allowance of any will, grant of administration, or other matter; any thing in said act to the contrary notwithstanding.

Appeals from the judge of probate enlarged.

SECT. 2. And further it is enacted and declared, that the judge of probate in each county respectively, when and so often as there shall be occasion, be, and hereby is empowered to allow of guardians that shall be chosen by minors of fourteen years of age, and to appoint guardians for such as shall be within that age, taking sufficient security of all such guardians for the faithful discharge of their trust according to law, and to account either to the judge or minor, when such minor shall arrive at full age, or at such other time as the judge, upon complaint to him made, shall see cause.

Guardians to be allowed by the judge of probate.

And whereas in one other act, entitled an act for affirming of former judgments, and providing for executions, amongst other things thereby enacted, it is provided that

appeals then depending, having not been heard, shall be heard and tried at the first superiour court,

Sect. 3. It is hereby explained and declared to be understood and intended, and shall be construed to intend, the first superiour court to sit within or for that county where the action was originally and first tried.

And for further explanation and an addition to the section or paragraph of said last mentioned act, wherein provision is made that a scire facias do issue forth upon any judgment passed in any county court or court of commissioners,

Sect. 4. It is hereby declared to extend, and shall be construed and taken to extend as well to any judgment passed in any court of assistants, superiour or inferiour court, at any time whatsoever, where execution has not been taken out or not levied for satisfying of the same, such writ of scire facias to be granted out of the clerk's office of the superiour or inferiour court respectively, to be held within or for the same county where such judgment was given.

And whereas by the precedent or form for an execution, the officer is commanded for want of goods, chattels or lands of the debtor, to be by him shewn or found within the precinct, to take the body of such debtor and commit him to prison,

Judgments to be satisfied in specie.

Sect. 5. It is hereby explained, enacted and declared by the authority aforesaid, that where judgment is granted for money, or any particular specie, the creditor shall not be compelled to take any other specie; but in every such case, for want thereof, the officer shall take the body of the debtor in execution, and imprison him, unless such creditor shall be content to receive his satisfaction in such other estate as may be tendered or found. And these words, to the acceptance of the said A. B. shall be supplied and inserted in the writ of execution, to follow next the word precinct.

Writs to to run through the province.

Sect. 6. And be it further enacted and declared by the authority aforesaid, that as well original as judicial writs, issuing out of the clerk's office of the inferiour courts of judicature respectively, shall run into any county within this province, and be there executed by the officer or officers of such county to whom they are directed.

Prohibition of mackerel being caught before the first of July repealed.

Sect. 7. And be it further enacted and declared, that the clause in the act, entitled an act for the regulating and encouragement of fishery, that henceforth no mackerel shall be caught (except for spending whilst fresh) before the first of July annually, be, and hereby is fully repealed and made void; any thing therein to the contrary notwithstanding.

And whereas by one other act, entitled an act for the settlement and support of ministers and school masters, amongst other things therein enacted, it is ordained, "that every minister, being a person of good conversation, able,

learned, and orthodox, that shall be chosen by the major part of the inhabitants in any town, at a town meeting duly warned for that purpose, (notice thereof being given to the inhabitants fifteen days before the time for such meeting) shall be the minister of such town, and the whole town shall be obliged to pay towards his settlement and maintenance, each man his several proportion thereof," upon further consideration of the said section or paragraph in said act, and the impracticableness of the method therein proposed for the choice of a minister, in divers towns, wherein there are more churches than one, and inconveniences attending the same not so well before seen,

Repeal of the paragraph in the act for settlement of ministers.

SECT. 8. It is enacted and declared, that the before recited section or paragraph, and all and every the clauses therein contained, shall from henceforth be repealed and revoked, and are hereby repealed and utterly made void for ever, any thing in the said act to the contrary notwithstanding.

SECT. 9. And it is further declared and ordained, that the paragraphs and sections hereafter following be enacted, and by the authority aforesaid are enacted, in addition to the remaining part of said act relating to ministers, that is to say, that each respective gathered church in any town or place within this province, that at any time shall be in want of a minister, such church shall have power, according to the directions given in the word of God, to choose their own minister; and the major part of such inhabitants as do there usually attend on the publick worship of God, and are by law duly qualified for voting in town affairs, concurring with the church's act, the person thus elected and approved, accepting thereof, settling with them, shall be the minister, towards whose settlement and maintenance all the inhabitants and rateable estates lying within such town, or part of a town, or place limited by law for upholding the publick worship of God, shall be obliged to pay in proportion.

Ministers, how to be chosen.

Provided, that nothing herein contained is intended or shall be construed to extend to abridge the inhabitants of Boston of their accustomed way and practice as to the choice and maintenance of their ministers.

SECT. 10. Be it further enacted, that in such towns or places where there is no church gathered, the rateable inhabitants of such town or place, at a meeting duly warned for that purpose (notice thereof being given fifteen days before the time of such meeting) by the major vote of such assembly then and there met, with the advice of three neighbouring ordained ministers, shall choose and call an orthodox, learned and pious person to dispense the word of God unto them; to the settlement and maintenance of which minister

Advice of neighbouring ministers to be had.

all rateable estates and inhabitants within such town or place shall be assessed and pay proportionably.

Sessions of the peace to provide remedy in case of neglect of maintenance of the ministry.

SECT. 11. And it is further enacted by the authority aforesaid, that where any town or place shall be negligent of their duty by law required, respecting the maintenance of the ministry, the court of quarter sessions of the peace within the same county, upon complaint to them made, are empowered and required effectually to provide for remedy thereof, and by warrant from said court to convent before them the selectmen, or others specially appointed by the inhabitants of such town or place to take care in that matter, having accepted such betrustment, and upon conviction of neglect therein, to impose a fine upon the delinquents not exceeding forty shillings each person for the first offence, and upon a second conviction of such neglect, to impose a fine of four pounds upon each person, and the like sum of four pounds for every after conviction, such fines to be levied by distress and sale of the offender's goods, returning the overplus, if any be, and to be disposed to the use of the poor of the same town or place by the selectmen or overseers of the poor.

CHAPTER XVII.

AN ACT FOR THE REGISTERING OF BIRTHS AND DEATHS.

FOR preventing of great uncertainty and inconvenience that may happen for want of a particular register of births and deaths,

Town clerks to register births and deaths.

Be it enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that every town clerk within this province shall be, and is hereby empowered and required to take an account of all persons that shall be born or shall die within each town respectively, and the precincts thereof, and fairly to register in a book their names and surnames, as also the names and surnames of their parents, with the time of their birth and death. And the clerk shall demand and receive the fee of three pence, and no more, for each birth or death by him so registered, to be paid by the parents or others nextly related to or concerned with the party born or dying; and if any shall refuse or neglect to give notice to the town clerk of the birth or death of any person that they are so related to or concerned for, or to pay for registering as abovesaid, by the space of thirty days next after such

birth or death, every person so refusing or neglecting, and being (upon the complaint of any town clerk) thereof convicted before a justice of peace within the same county, shall forfeit and pay unto such clerk the sum of five shillings, to be levied by distress and sale of the offender's goods, by warrant from such justice, if payment thereof be not made within four days next after conviction as aforesaid; and every town clerk shall give forth from the registry a fair certificate under his hand of persons born or dying in the town, to any who shall desire the same, and he shall receive six pence and no more for every certificate so given.

CHAPTER XVIII.

AN ACT FOR THE RESTRAINING THE TAKING EXCESSIVE USURY.

Forasmuch as the abatement of interest hath always been found beneficial to the advancement of trade and improvement of lands by good husbandry, and whereas the taking of eight in the hundred for the interest of money, tends to the great discouragement of ingenuity and industry in the husbandry, trade and commerce of this province,

Be it for the reasons aforesaid enacted by the governor, council and representatives, convened in general assembly, and it is enacted by the authority of the same, that no person or persons whatsoever, from and after the first day of August, in the year of our Lord one thousand six hundred ninety three, upon any contract to be made after that time, shall take directly or indirectly, for loan of any monies, wares, merchandize, or other commodities whatsoever, above the value of six pounds for the forbearance of one hundred pounds for a year; and so after that rate for a greater or lesser sum, or for a longer or shorter time; and that all bonds, contracts, mortgages and assurances whatsoever, made after the time aforesaid for the payment of any principal or money lent, or covenanted to be lent, upon or for usury, whereupon or whereby there shall be reserved, or taken above the rate of six pounds in the hundred as aforesaid, shall be utterly void; and that all and every person and persons whatsoever, which shall after the time aforesaid, upon any contract, take, accept and receive by way or means of any corrupt bargain, loan, exchange, or by covin, or deceitful conveyance, or by any other way or means whatsoever, for the forbearing or giving day of pay-

Six pounds per cent. interest per annum for loan of money.

Penalty for contracting for more.

ment for one whole year, of and for their money, or other thing or things, above the sum of six pounds for the forbearing of one hundred pounds for a year, and so after that rate, for a greater or lesser sum, or for a longer or shorter time, shall forfeit and lose for every such offence the full value of the goods and monies, or other things so lent, exchanged, bargained, sold or agreed for, one moiety thereof to their majesties, towards the support of the government of this province, and the contingent charges thereof, the other moiety to the informer that shall sue for the same; any custom, usage or law to the contrary notwithstanding.

A saving.

Provided, nothing in this act shall extend to the letting of cattle, or other usages of like nature, in practice amongst farmers, or maritime contracts among merchants, as bottomry, or course of exchange, as hath been heretofore accustomed.

CHAPTER XIX.

AN ACT FOR THE PARTITION OF LANDS, &c. AND THE RECOVERY OF LEGACIES AT THE COMMON LAW.

Partition of lands betwixt coparceners, &c. to be forced by the common law.

SECT. 1. BE it enacted by the governor, council and representatives, convened in general court, and by the authority of the same, that all persons having or holding, or that hereafter shall have or hold any lands, tenements or hereditaments, as coparceners, joint tenants, or tenants in common, may be compelled by writ of partition at the common law to divide the same, where the parties cannot agree to make partition thereof by themselves.

Provided, this act shall not be understood to repeal, or any ways alter any clause or clauses in the act for regulating of townships, referring to undivided or common lands.

Legacies to be recovered at the common law.

SECT. 2. And it is further enacted by the authority aforesaid, that where any certain legacy is or shall be bequeathed and given to any person in his or her last will and testament, as also where any residuary or uncertain legacy is, or shall by the accompt of any executor be reduced to a certainty, every such legacy and legacies as aforesaid may be sued for, and recovered at the common law; any law, custom or usage to the contrary notwithstanding.

CHAPTER XX.

AN ADDITIONAL ACT FOR THE PUNISHING OF CRIMINAL OFFENCES.

WHEREAS the breach of sundry criminal laws of this province is only punishable by fines, and many times the breakers of them have not money to satisfy the same,

Be it therefore enacted by the governor, council and representatives, convened in general assembly, and by the authority of the same, that henceforward it shall be in the power of any justice of the peace, that shall have cognizance thereof, to punish breakers of the peace, profaners of the sabbath, and unlawful gamesters, drunkards, or profane swearers or cursers, by setting in the stocks, or putting into the cage, not exceeding three hours, or imprisonment twenty-four hours, or by whipping, not exceeding ten stripes, as the case may deserve, and where the offender has not wherewithal to satisfy the law in that case provided.

Criminal offences to be punished by sitting in the stocks, &c. where the offenders cannot otherwise satisfy the law.

CHAPTER XXI.

AN ACT RELATING TO SURETIES UPON MESNE PROCESS IN CIVIL ACTIONS.

BE it enacted by the governor, council and representatives, in general court assembled, and by the authority of the same it is ordered and enacted, that where bail is given upon mesne process in any civil action, not only for the appearance of the party to answer the suit, but also to abide the order or judgment of the court that shall be given thereon, every such surety or sureties shall be obliged to satisfy the judgment in case of the principal's avoidance, and the return of non est inventus upon the execution, unless the surety at the time of entering up judgment do bring the principal into court and move to be discharged, upon which the court shall order the keeper of the prison to receive him into custody, that so his body may be taken in execution; and the party for whom the judgment was given may have a writ of scire facias out of the same court against such surety or sureties; and in case no just cause be shown to the

contrary, the judgment shall be affirmed against the surety or sureties, with the additional costs of suit, and execution shall be accordingly granted.

Always provided, that such writ of scire facias be taken out and served upon the surety within twelve months after the first trial, and not afterward. And every surety of whom such recovery is made may bring his action for damages against the principal debtor.

CHAPTER XXII.

AN ACT FOR REGULATING OF THE MILITIA.

WHEREAS for the honour and service of their majesties, and for the security of this their province against any violence or invasion whatever, it is necessary that due care be taken that the inhabitants thereof be armed, trained, and in a suitable posture and readiness for the ends aforesaid, and that every person may know his duty and be obliged to perform the same,

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and it is ordained and enacted by the authority of the same,

Persons liable to train.

1. That all male persons from sixteen years of age to sixty, other than such as are herein after excepted, shall bear arms, and duly attend all musters and military exercises of the respective troops and companies where they are listed or belong, allowing three months time to every son next after his coming to sixteen years of age, and every servant so long after his time is out, to provide themselves with arms and ammunition, &c.

Clerk to take a list four times a year.

2. And the clerk of each troop and company, once a quarter yearly, shall take an exact list of all persons living within the precincts of such troop or company, and present the same to the captain or chief officer, on pain of forfeiting forty shillings for each default, to be paid to the captain or chief officer to the use of the company, and in case of non-payment, to be levied by distress and sale of the offender's goods, by virtue of a warrant from the captain or chief officer, who is hereby empowered to grant the same.

Persons to attend duty where listed, till orderly dismissed.

3. That every person listed in any troop or company shall so continue and attend all duty in such troop or company, or otherwise suffer the penalty by law provided, until orderly dismissed or removed out of the town or precinct; and in case of removal into the precinct of another company in the

same town, to produce a certificate under the hand of the captain or chief officer of the precinct whereto he is removed, that he is listed there.

Penalty on such as shall shift to avoid listing.

4. If any person, liable to be listed as aforesaid, do exempt himself by shifting from house to house, or place to place, to avoid being so listed, he shall pay as a fine for every such offence, to the use of the company to which he belongs, ten shillings, being convicted before any justice of the peace of the county.

Foot soldiers, how to be armed.

5. That every listed soldier and other householder, except troopers, shall be always provided with a well fixed firelock, musket, of musket or bastard musket bore, the barrel not less than three feet and a half long, or other good firearms to the satisfaction of the commission officers of the company, a knapsack, a collar with twelve bandoleers, or cartouche box, one pound of good powder, twenty bullets fit for his gun, and twelve flints, a good sword or cutlass, a worm and priming wire fit for his gun, on penalty of six shillings for want of such arms as is hereby required, and two shillings for each other defect, and the like sum for every four weeks he shall remain unprovided, the fines to be paid by parents for their sons under age, and under their command, and by masters or heads of families for their servants, other than servants upon wages.

Troopers, how to be furnished.

6. That every trooper shall be always provided with a good serviceable horse of five pounds value, and not less than fourteen hands high, (the same to be determined by the two chief commission officers) covered with a good saddle, bit, bridle, holsters, pectoral and crupper, and furnished with a carbine, the barrel not less than two feet and a half long, with a belt and swivel, a case of good pistols, with a sword or cutlass, a flask or cartouche box, one pound of good powder, three pounds of sizeable bullets, twenty flints, and a good pair of boots and spurs, on penalty of twelve shillings for want of such horse as is hereby ordered, and three shillings apiece for every other defect, and the like sum for every six weeks he shall remain unprovided; and that each trooper list his horse, and shall not dispose thereof without the consent of his chief officer, on the penalty of five pounds; and for non-appearance at the time and place appointed for exercise, every listed trooper for each day's neglect shall pay ten shillings fine.

7. That there may be two troops in a regiment, each of which troops shall not exceed sixty men with officers.

Regimental musters and training of particular companies.

8. That regimental musters shall be but once in three years, except in Boston; and every captain or chief officer of any company or troop in any regiment shall be obliged, on penalty of five pounds, to draw forth his company or troop, or cause them to be drawn forth four days annually, and no more, to exercise them in motions, the use of arms, and

shooting at marks, or other military exercises, which every person liable to train, having been duly warned, and not appearing and attending the same, shall for each day's neglect pay a fine of five shillings.

Commission officers' power.

9. That the commission officers of any company or troop, or the major part of them, may order the correcting and punishing disorders and contempt on a training day, or on a watch, the punishment not being greater than laying neck and heels, riding the wooden horse, or ten shillings fine.

Military watches.

10. That there be military watches appointed and kept in every town, at such times, in such places, and in such numbers, and under such regulation as the chief military officers of each town shall appoint, or as they may receive orders from the chief officer of the regiment; and that all persons able of body, or that are of estate, and not exempted by law, shall by themselves or some meet person in their stead, to the acceptance of the commander of the watch, attend the same, on penalty of five shillings for each defect, there having been due warning given.

Penalty for not attending military exercise.

11. Every soldier or other person liable by law, refusing or neglecting to attend military exercises on training days or military watches, that shall not pay, or have no estate to be found whereon to levy the fine, it shall be in the power of the captain or chief officers of such company on the next training day after such neglect (he not having satisfied the clerk) to punish him for such offence, by laying neck and heels, or riding the wooden horse, not exceeding one hour's time; and if such delinquent shall absent himself the second training day, without giving sufficient reason to the captain or chief officer for the same, it shall be in the power of the chief officer of the company to direct a warrant to the constable of the town, requiring him to apprehend such delinquent, and bring him into the field, that he may be punished according as by this law is provided; and all constables are hereby required to execute such warrant accordingly.

Persons exempted from training.

12. That the persons hereafter named be exempted from all trainings, viz. the members of the council, the representatives for the time being, the secretary, justices of the peace, president, fellows, students, and servants of Harvard college, exempted by college charter, masters of art, ministers, elders and deacons of churches, sheriffs, allowed physicians, or surgeons, and profest school-masters, all such as have had commissions, and served as field officers, or captains, lieutenants, or ensigns, coroners, treasurers, attorney-general, deputy sheriffs, clerks of courts, constables, constant ferrymen, and one miller to each grist mill, officers employed in and about their majesties' revenues, all masters of vessels of thirty tons and upwards, usually employed beyond sea, and constant herdsmen, lame persons, or other-

wise disabled in body, producing certificate thereof from two able surgeons, Indians and Negroes.

Persons exempted from military watches, &c.

13. That the persons hereafter named be, and hereby are exempted from military watches and wardings, viz. the members of the council, secretary, representatives for the time being, president, fellows, students of Harvard college, and the gentlemen belonging to the troop of the governor's guard, ministers and elders of churches, allowed physicians and surgeons, constables, constant ferrymen, and one miller to each grist mill.

Commission officers to appoint serjeants and corporals.

14. That the captain and commission officers of each company or troop shall and hereby are fully empowered to nominate and appoint meet persons to serve as serjeants and corporals in the respective companies or troops, and to displace them, and appoint others in their room, as they shall see meet.

View of arms.

15. That twice every year, or oftener if required, every captain or chief officer of each company or troop, shall give order for a diligent inquiry into the state of his company, and for taking an exact list of the names of his soldiers, and inhabitants within the limits of his company, and of the defects of arms or otherwise, and names of the effective persons, that they may be prosecuted as the law hath provided, and such care may be taken as is proper to remedy the same.

How persons unable to purchase arms may be provided.

16. That if any person who is by law obliged to provide arms and ammunition, cannot purchase the same by such means as he hath, if he bring to the clerk of the company corn or other merchantable provision, or vendible goods, so much as by apprizement of the clerk and two other persons mutually chosen, shall be judged of greater value by one fifth part than such arms or ammunition is of, he thereupon shall be excused from the penalties for want of arms and ammunition, until he can be provided, which the said clerk shall provide as soon as may be by sale of such goods, and render the overplus to the party, if any may be, but the party shall notwithstanding give his personal attendance upon all occasions as other soldiers, until he be supplied, and at such times shall perform any proper service he may be put upon by the captain or chief officer of the company he belongs to; but if the person be judged unable to buy arms, or to lay down the value proposed, if he be a single man, he shall be put out to service by the two next justices of the peace, to earn wherewith to buy arms and ammunition. If such person have a family, and be judged unable by the captain and major part of the selectmen to lay down such value for the end aforesaid, then he shall be provided for out of the town stock, or by arms procured at the town's charge, until such time as he be judged able to pro-

vide for himself; and such arms to be under the care of the chief military officer and the selectmen of the town.

How drums, trumpets, &c. are to be provided.

17. That drums, drummers, trumpets, trumpeters, colours and banners be by the commission officers of each troop or company provided at the charge of the respective companies and troops, where they are not already provided and the fines will not reach to procure the same; and that such as have been employed as drummers or trumpeters, or are fit and capable thereof, being appointed unto such service by the chief officer of any company or troop, shall attend the service on penalty of forty shillings fine. And every drummer for a year's service shall have twenty shillings if he find his own drum, and ten shillings if the captain finds the drum; and a trumpeter, forty shillings a year if he finds his own trumpet, and twenty shillings if the captain finds it.

Penalty for refusing to serve as clerk.

18. That such meet person as by the commission officers of any company of troop shall be appointed clerk, and shall refuse to serve, shall pay forty shillings fine, and another be chosen in his room, and so until one do accept, which person shall be under oath for the faithful discharge of his office, to be administered unto him by a justice of peace in the same county in the words following:

Oath.

You do swear truly to perform the office of clerk of the military company under the command of A. B. captain, to the utmost of your skill and power in all things appertaining to your office according to law. So help you God.

Allowance and distress for fines.

And for every distraint made for any fine not exceeding forty shillings, he shall have one quarter part for his pains and trouble. And for such fines he may distrain ex officio, and in distraining shall observe such rules as the law hath provided in other cases, and upon ten days' notice shall account with and pay to the captain or chief officer what fines he hath received, his own part being deducted.

Meeting of the chief officers of the regiment.

19. The chief military officer of each regiment, as often as he shall see cause, shall require the captain or chief officer of each company in his regiment to meet at such time and place as he shall appoint, and then with them to confer and give in charge such orders as shall by them, or major part of them, be judged meet for the better ordering and settling their several companies, and for the better promoting of military discipline amongst them. And the chief officer

Their power.

is hereby empowered by his warrant, directed to any clerk or officer of his regiment, to summon or cause to be brought before them any offender against the laws military, and according to law to hear and determine all matters proper for their cognizance, and to give sentence, and to grant mittimus or warrants for distraint to the clerk of the company where the offence is committed, for executing which warrant, if

above forty shillings, he shall have ten shillings out of the same for his pains and trouble therein, and no more.

Town stock of ammunition, &c.

20. That there be a stock of powder and ammunition in each town provided, and from time to time as there is need, be renewed by the selectmen, which shall be a barrel of good powder, two hundred weight of bullets, and three hundred flints, for every sixty listed soldiers, and after that proportion for the listed soldiers of each town whether more or less; also that the selectmen procure such a number of arms, and so much ammunition as shall be made to appear, by the chief commission officer of each company in the several towns, to be needful for the supply of such poor as by law they are to provide for. And such town as cannot make it appear to the chief commander of the regiment that they are thus provided, at or before the first of May next, shall pay five pounds fine, which shall be distrained by warrant from the said officer, directed unto the constable, upon the selectmen of the town, or any of them, and disposed of for the use of the said town towards the supply of such stock; and the like sum for every three months they shall remain so unprovided.

Penalty for being unprovided.

Selectmen to make a rate for buying of ammunition, &c. in case.

21. And the selectmen where there is not a sufficient stock of powder, arms and ammunition, and in such towns where there is need of watch houses, firing and candles for their watches, in such case the selectmen, for so much as is wanting, are to procure or supply what is required or needed as before, and shall make provision for the same by a rate, equally and justly laid upon the inhabitants and estate in such towns, and such rate signed and committed by them to the constables to collect, who shall, and hereby are required and authorized to collect the same, and for non-payment to distrain as for other rates, and the money or pay collected to be brought in to the chief military officers and the selectmen of the town, to be by them improved for the ends aforesaid; and the selectmen, or so many of them as shall neglect their duty herein, shall pay twenty shillings fine, to be paid to the captain for the use of the company, being convict before two justices of the peace, who are hereby empowered to convent the party, and to hear and determine the same, and if need be, to appoint other meet persons in such towns under the like penalties to perform the said service.

Penalty for neglect.

Clerks ex officio not to distrain within four days.

22. That no clerk ex officio make distraint for any fine until four days after the offence committed, that so the party may have opportunity to make excuse, if any he have, why he should not pay the fine. And every clerk that neglects or refuses to account or make payment, as by this law is provided, he, by a warrant from the chief officer of the company directed to the constable, may be distrained on for so much as he hath or should have collected or distrained for.

Penalty for his neglect to account &c.

Penalty for officers disobeying their superiour officers.

25. That all officers yield obedience to the warrants or commands of their superiour officers, on penalty of five pounds, to be heard and determined at the next meeting of the chief officers and captains of the regiment, and the fine to be taken by distress and sale of the offender's goods, (returning the overplus, if any be) by warrant from the chief officer of the regiment, directed to the clerk of the company to which such offender belongs, and to be improved to the use and benefit of such company as the officers so met shall agree, their expenses being first defrayed out of the same.

Alarm.

21. That an alarm at the castle upon castle-island near Boston, being made upon such causes as are agreeable to instructions to be given by the governor to the captain of the castle, shall be by putting out two flags, and firing off two guns towards the town, at which time there shall with all possible speed such numbers be sent down for their relief, as the governor and captain general, or such person as shall be commander in chief in his absence, shall think necessary. At any other place an alarm may be made by firing three guns one after another, or by firing a beacon, their drums beating an alarm, all persons being called upon to arm, upon which all the trained soldiers, and others capable to bear arms that are then resident in any town, shall forthwith appear, complete with their arms and ammunition according to law, at the usual place of rendezvous, or where the chief officers shall appoint, there to attend such commands as shall be given for their majesties' service, and that on the penalty of five pounds fine, or three months imprisonment, the members of the council, justices and sheriffs, to attend upon the governor, if at or near Boston; and in other places, to appear and advise with the chief military officers of the town, and to be assisting in their majesties' service according to their quality. And such alarms shall at all times be carried on from neighbourhood to neighbourhood, and from town to town throughout the province; and from such town where the alarm is made, there shall be forthwith despatched one or more horsemen to signify the occasion thereof to the justice of the peace, chief military officer, or constable of the next town or towns, which all persons are to take notice of and attend as is before directed; and if the alarm be made either from a seaport town, or other town that lies a frontier to, or in great danger of the enemy, the captain or captains of the adjacent towns shall forthwith go with or send such relief as they shall judge meet for the offence of the enemy, or defence of themselves and neighbours, but so as to be observant to any commands or orders they may receive from their superiour officers. And if any person shall wilfully make a false alarm, he shall be fined

Penalty for not appearing upon an alarm.

Relief to be sent to the frontiers.

Penalty for a false alarm.

to their majesties, twenty pounds, for support of the government, or suffer six months imprisonment.

Penalty fo quartering soldiers, &c. upon inhabitants.

25. No officer, military or civil, or other person, shall quarter or billet any soldier or seaman upon any inhabitant within this province without his consent, other than the publick licensed houses, under the penalty of one hundred pounds, to be recovered by action, bill, plaint or information, in any court of record, one half to their majesties for the support of the government, the other half part to the party grieved that shall inform and sue for the same. And every such inhabitant may refuse to quarter any soldier or seaman notwithstanding any order whatsoever.

26. That all persons exempted by this law from trainings, shall notwithstanding be provided with arms and ammunition complete, upon the same penalty as those that are obliged to train.

Fines and forfeitures how to be recovered and disposed.

27. All fines, penalties and forfeitures arising by virtue of this act, or any breach thereof (not otherwise disposed of therein) shall be for the use of the regiment, company, or troop respectively, that is to say, for procuring and repairing drums, trumpets, colours, banners, halberts, paying of drummers and trumpeters, or other charge of the said company, and the overplus (if any be) to be laid out in arms and ammunition for a town stock, and be recovered by action, bill, plaint, or information, in any of their majesties' courts of record.

CHAPTER XXIII.

AN ACT FOR HIGHWAYS.

For the better amending and keeping in repair and clear the highways and common roads, leading from town to town, and place to place, and for laying out new highways, and turning old highways where it shall be needful:

Surveyors of highways to be chosen and sworn annually.

Sect. 1. Be it enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that there be annually chosen two or more freeholders in each town respectively within this province, to be surveyors of the highways, who shall be sworn before some justice of the peace in the county, diligently and faithfully to perform the said office for the year ensuing, which surveyors shall take care that all highways, private ways, causeys and bridges lying within the precincts of such

town, be kept in repair, and amended from time to time when and so often as shall be needful, at the charge of such town (where it is not otherwise settled) that so they may be safe and convenient for travellers, teams and drovers; and the surveyors are hereby empowered to cut down, dig up, or remove, as well all sorts of trees, bushes, stones, fences, rails, gates, inclosures, or other thing or things as may any way straiten, hurt, hinder or incommode the highways, as also to dig for stone or gravel, clay, marl, sand or earth, in any land not planted or inclosed, and to press any carriage, workmen, or other things fit to be employed in the highways, for such reasonable satisfaction to the parties concerned as such surveyors can agree for, and in case of disagreement, such as the two next justices shall appoint.

Their power.

And the surveyors shall appoint certain days for providing materials and working in the highways, having respect to the season of the year and the weather, and giving convenient publick notice, at which days all persons liable to work, that is to say, from sixteen years old and upward, by themselves, or other sufficient persons in their stead, shall attend; and if any person make default of attending the said work, by himself or other sufficient person in his stead, or with his cart and team, as he shall be appointed, upon complaint and proof thereof before the next justice of peace, without reasonable excuse made and allowed by such justice, he shall cause to be levied of every such offender's goods the sum or penalty of two shillings and six pence for each day's neglect of labour, besides the charge of making distress, and for default of their cart and team, six shillings per diem, with charge of distress as aforesaid.

Surveyors to give publick notice for working on the highways.

Penalty for non-attendance.

Sect. 2. And further it is enacted by the authority aforesaid, that where a new highway or common road from town to town or place to place shall be wanting, and where old ways with more conveniency may be turned or altered, upon application made to the justices in quarter sessions, within the same county, the said court may appoint a committee of two or three sufficient freeholders of the next towns, who shall have most occasion of the said way, to inquire into the necessity and conveniency thereof, and to make their report thereon; and being judged to be of common necessity or conveniency, the justices of the said court shall order a warrant to the sheriff or his deputy to summon a jury out of the next towns, to meet at some convenient day and place therein mentioned, to view and lay out such highways or roads, who shall have an oath administered unto them by a justice of peace, to lay out such way according to the best of their skill and judgment, with most conveniency to the publick, and least prejudice or damage to any particular person, which having done, the sheriff or his deputy is to make re-

Quarter sessions to give order for laying out new highways, or altering old ones.

turn thereof, at the next court of quarter sessions of the county where the same way is, as well under his own as the hands of the jurors by whose oath the same is laid out, to the end the same may be allowed and recorded, and after known for a publick highway.

Damage in proprieties to be made good.

Provided, that if any person be thereby damaged in his propriety or improved grounds, the town shall make him reasonable satisfaction, by the estimation of those that laid out the same. And if such person so damaged find himself aggrieved by any act or thing done by the jury, either in laying of the said way, or estimate of his damages, he may apply unto the court of quarter sessions for relief, before any allowance or determination be made by them, who are hereby empowered to hear and determine the same; but if no sufficient cause appear for complaint, he shall pay all charges arising thereby.

Selectmen's power to lay out private ways.

Recompense for damage.

Sect. 3. And be it further enacted, that the selectmen of each town respectively be, and are hereby empowered, by themselves, or others whom they shall appoint, to lay out or cause to be laid out, particular and private ways for such town only as shall be thought necessary, so as no damage be done to any particular person, in his land or propriety, without due recompense to be made by the town, as the selectmen and the party interested may agree, or as shall be ordered by the justices in quarter sessions, upon inquiry into the same, by a jury to be summoned for that purpose.

Nuisance upon highways to be removed.

And it is further enacted, that if any person or persons shall erect and set up any gates, rails or fence upon or across any highway or country road, or continue any such to the annoyance and incumbrance of the same, other than such as shall be allowed by the court of quarter sessions within the county, it shall be deemed a common nuisance, and it shall be lawful for any person or persons to pull down and remove the same; and if any such incumbrance be in any particular or private way, allowed and settled by any town, upon complaint thereof made to the next justice of the peace, he shall appoint a committee of two or more discreet and indifferent persons to view such incumbrance, and cause the same to be removed. And if any person be aggrieved at the removal of any such gate, bars or fence, he shall be heard at the quarter sessions within the same county, and upon just cause shown, shall be by them relieved.

Damage happening through defects in ways or bridges to be made good by the county or town.

Sect. 4. And be it further enacted by the authority aforesaid, that if through neglect or not keeping in sufficient repair any highway, causey, or bridge, any person happen to lose his life in passing any such highway, causey or bridge, or lose a limb, brake a bone, or receive any bruise or breach in any part of his body, through any defect in, or want of necessary repair of such highway, causey or bridge, the county or town respectively to which of right it belongs

to maintain and keep the same in repair, having been warned or notified of such defect and need of repairs and amendment thereof, either in writing under the hand of two witnesses, or by presentment thereof made at the sessions of the peace, shall pay unto the parents, husband, wife, children or next of kin to any person so losing his or her life, the sum of one hundred pounds, and for any other harm as aforesaid, double the damage sustained thereby, to be ordered and set upon them by the justices of the same county in quarter sessions, who are hereby empowered thereto, and to render like recompense for any carriage, cart, horse, or other beast harmed or lost, proportionable to the damage suffered.

Penalty on surveyors refusing to accept, or neglecting their duty.

And if any person chosen a surveyor shall refuse to accept and take his oath, he shall forfeit twenty shillings, and having accepted do neglect his duty, shall forfeit for every neglect five pounds, the said forfeitures respectively to be to the use of the town, and to be recovered by complaint before the next justice of peace, or at the sessions of the peace in the same county.

No person to be charged above a due proportion to the highways, either in labour or teams.

CHAPTER XXIV.

AN ACT FOR REGULATING OF FENCES, CATTLE, &c.

For the better preventing of damage in corn fields, and other improved and common lands, by horses, neat cattle, sheep or swine, going at large,

Sect. 1. Be it enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that in every town and peculiar within this province, there be annually chosen by the inhabitants thereof, at the time of their meeting to choose selectmen and other town officers, two or more meet persons, to be viewers of fences, who shall be sworn before a justice of peace to the faithful discharge of their office, in the particulars committed to their care by this act, as also two or more persons for haywards or field drivers. And that all fences of four feet high, being of five rails, or four that are equivalent, boards, stone wall, brooks, rivers, ponds or creeks, equivalent thereto, in the judgment of the fence viewers, shall be accounted sufficient fences; and all fences

Fence viewers to be chosen and sworn.

Haywards or field drivers.

Fences of four feet high to be accounted sufficient

in common fields and other grounds under improvement, that shall be judged insufficient by the fence viewers, and notice thereof given to the party that of right ought to maintain the same, he shall sufficiently repair and amend all defects therein within the space of six days next after such notice given him; and in case of his neglect, the fence viewers are hereby empowered and ordered forthwith to cause such defective fence or fences to be sufficiently made up and repaired, and the person or persons to whom it belongs to make good such fence, shall pay double the cost and charge expended for doing of the same; and in case of refusal or neglect to make payment as aforesaid, by the space of one month next after an account presented, and demand thereof made, such fence viewers may recover the same by action, plaint or information, to be brought before any justice of the peace within the same county, if the sum exceed not forty shillings, but if it be above that sum, then in the inferiour court of common pleas.

Penalty for not repairing insufficient fence.

How to be recovered.

SECT. 2. And it is further enacted by the authority aforesaid, that no persons, other than proprietors and freeholders in any town or peculiar, shall let any horse or horse kind run to feed upon any common land belonging to such town or peculiar, and every such proprietor and freeholder may keep one horse beast upon the common and no more, except such proprietors and freeholders, every of whom have a rateable estate within such town or peculiar, of the value of fifty pounds, they to have the privilege of two and no more.

None but proprietors and freeholders to have any horse run to feed on the common.

And the owners of all horse kind going upon the common are required to cause the same to be entered with the town clerk, who is to keep a book for that purpose, and therein set down as well the natural as artificial marks, and for every such horse or horse kind shall pay a fee of three pence to the clerk for his entry, such entry to be made at or before the tenth day of April next, and so annually, on pain that every person neglecting so to do shall forfeit and pay the sum of ten shillings for each default. And if any freeholder or proprietor shall desire to put more horses upon the common than is herein before allowed, he shall first repair to the town clerk, and make entry of the number and marks thereof as aforesaid, and pay the fee as aforesaid for every such entry, as also the sum of five shillings per head, per annum, to the use of the proprietors of such commons, on pain of forfeiting the sum of ten shillings per head for such neglect.

Horses going on the common, to be entered with the town clerk.

And every town and peculiar within this province are required to choose annually two meet persons, to see to the due observance of this act relating to horses, and to prosecute the breakers thereof; and if any person, so chosen, shall refuse to serve, or neglect his duty in any of the par-

Persons to be annually chosen, to see to the observance of this act.

ticulars herein committed to his care, he shall forfeit and pay the sum of twenty shillings, to the use of such town.

Town clerk to account annually.

And the town clerk of each town respectively shall once in the year give an account, and pay in to the selectmen of the town so much as he shall receive by virtue of this act for any horse kind going upon the common.

Penalties and forfeitures how to be disposed.

All penalties and forfeitures arising for breach of this act, relating to horses going upon the common, shall be one moiety thereof unto the use of the persons to be appointed to see to the observance of this act, and the other moiety to him or them that shall inform and sue for the same before any justice of the peace within the county.

Swine to be yoked and ringed.

SECT. 3. And be it further enacted by the authority aforesaid, that all swine, going at large on the commons, shall be sufficiently yoked, from the first of April to the fifteenth of October, yearly, and ringed in the nose all the year; and if any swine be found unyoked or unringed, their owners shall be liable to pay sixpence per head, and if found damage feasant, being unyoked or unringed, to pay twelve pence per head, over and above double damages to the party injured; and the hayward or field driver or any other person may take up and impound such swine.

Fee for impounding.

And that there be paid unto the hayward or field driver one shilling per head for all neat cattle or horses, and three pence per head for all sheep and swine, by him impounded: and to the pound keeper two pence per head for all neat cattle or horses, and one penny per head for all sheep or swine, for taking in and letting out, to be paid by the owners of such creatures.

Penalty for sheep going on the common without a keeper.

And that for every sheep in every town going on the commons without being under the hands of a shepherd, from the first of May to the last of October, in every year, the owners or keeper of the said sheep shall pay the sum of three pence for every sheep at any time so found running on the common, not under the hand of a shepherd or keeper, betwixt the first of May and last of October, yearly.

CHAPTER XXV.

AN ADDITION TO THE ACT FOR ESTABLISHING OF JUDICATORIES AND COURTS OF JUSTICE WITHIN THIS PROVINCE.

WHEREAS by said act, amongst other things therein contained, it is enacted, that it shall be in the liberty of the party cast in any of the inferiour courts to appeal from the verdict and judgment given therein unto the next superiour court within or for the same county, the case there to be tried to a final issue, or by a new process once and no more to review the said case in the same court where it was first tried, and within the space of ten days after judgment given upon such trial by review, the party aggrieved may bring his writ of error for a trial of the said case at the next superiour court to be held within or for the same county, to receive a final issue and determination, which said clause referring to reviews and writs of error, doth only extend to the courts established by said act, and no provision is thereby made for any trials heretofore had in the county courts in the late distinct colonies now united within this province, which are now dissolved,

And whereas for want of due provision and remedy therein, great damage and injury may occur to some of their majesties' good subjects within this province, for redress whereof, and that no defect or want of justice may in any manner happen or be,

SECT. 1. Be it enacted by the governor, council and representatives, convened in general assembly, and by the authority of the same, that where any trial, judgment, sentence or decree has been had, given or made in any of the county courts within the late colonies of the Massachusetts or Plymouth, or province of Maine, of what nature, kind or quality soever the same have been there tried, had, given or made, since the year of our Lord, one thousand six hundred eighty and six, and no review or appeal thereupon heretofore had and prosecuted, it shall and may be in the liberty of either party (plaintiff or defendant) aggrieved, within the space of twelve months next after the date of this present act, and not afterwards, to bring his or their action of review to the inferiour court of common pleas to be held for the same county where the action was first tried; and after judgment or sentence given upon such trial by review, the party aggrieved may appeal therefrom unto the next superiour court to be held within or for the same county, and the case there to receive a final issue and determination, any law,

Review of cases tried in the county courts within the late colonies.

Appeal.

usage or custom to the contrary notwithstanding, regard being had in the trial of the merit of any such case, to the laws then in force within the said colonies respectively.

And forasmuch as the days and times appointed by the aforerecited act for the holding of the court of quarter sessions of the peace and inferiour court of pleas, within the county of Suffolk, do fall inconveniently to be attended, in respect of other publick occasions and concernments of the government,

Court of quarter sessions and inferiour court for Suffolk to be held in the months of July, October, January and April.

SECT. 2. Be it therefore further enacted by the authority aforesaid, that from and after the end of the month of March next the same be altered, and that the said court of quarter sessions and inferiour court of common pleas for the said county of Suffolk be thence forward held and kept at Boston on the first Tuesday in the month of July, October, January and April yearly for ever, any law, usage or custom to the contrary notwithstanding.

SECT. 3. And be it further enacted by the authority aforesaid, that there be a superiour court of judicature, court of assize and general gaol delivery, held and kept at Kettery, within the county of York (late the province of Maine) upon Wednesday, the week before the sitting of said court at Ipswich, within the county of Essex, which is stated by law to be held upon the second Tuesday of May, yearly.

Superiour court of judicature &c. to sit at Kettery and at Springfield.

SECT. 4. And be it further enacted by the authority aforesaid, that there be a superiour court of judicature, court of assize and general gaol delivery, held and kept at Springfield within the county of Hampshire, upon the last Tuesday of June, yearly.

CHAPTER XXVI.

AN ACT FOR A NEW ESTABLISHMENT AND REGULATION OF THE CHANCERY.

WHEREAS by an act made and passed by this court in the year one thousand six hundred ninety-two, entitled an act for the establishing of judicatories and courts of justice within this province, amongst other things therein contained, it is enacted, that there be a high court of chancery within this province to be held and kept by the governor or such other as he shall appoint to be chancellor, assisted with eight or more of the council, at such times and places as the governor or chancellor for the time being shall from

time to time appoint, with power and authority to hear and determine all matters of equity, &c. as in and by the said act doth appear, which court so constituted is by experience found not agreeable with the circumstances of this province in divers respects, not then so well considered or foreseen,

SECT. 1. Be it therefore declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the aforerecited section or paragraph in said act and every clause thereof, so far as concerns or any wise relates unto the constitution of said court of chancery, be and hereby is repealed and made null and void to all intents and purposes as if the same had never been.

SECT. 2. And further it is enacted by the authority aforesaid, that there be a high court of chancery within this province which shall have power and authority to hear and determine all matters of equity of what nature, kind or quality soever, and all controversies, disputes and differences arising betwixt co-executors, and other matters proper and cognizable for said court, not relievable at common law, and not otherwise, and to order subpœnas, attachments, and other processes, and to make orders and decrees interlocutory and definitive, and to award execution thereon. Court of chancery.

Which said court of chancery shall be holden and kept in Boston by three commissioners, being freeholders within the province, whom the governor with the advice and consent of the council shall nominate and appoint for that service, assisted with five masters in chancery to be nominated and appointed as aforesaid, unto whom references may be made, and affidavits and recognizances taken before them, and to make reports, and to do what else is proper for masters in the chancery. To be held by three commissioners assisted with five masters in chancery.

And the said commissioners and masters in chancery, before they enter upon the execution of their commission, shall be sworn before the governor and council, to the faithful discharge of their respective offices and trust, and to do right to poor and rich according to the rules of equity and good conscience, in all matters that shall be brought before them, and therein to proceed without delay. Commissioners and masters in chancery to be sworn.

And the said court are hereby empowered to nominate and appoint a register and other officers proper and necessary, and to administer an oath unto them, for the faithful discharge of their respective offices and trust. To appoint their officers.

And all writs and processes, issuing out of the said court, shall be under the seal of the province, and bear the test of the said three commissioners and returnable in said court, which shall be always open, and shall sit for the hearing and determining of cases four times in the year, viz. on the second Tuesday of the months of April, July, October, and January. Writs and processes to be under the province seal, &c. Time for sitting of said court.

Appeal.

Provided nevertheless, that either party not resting satisfied in the definitive sentence, judgment or decree given in said court, in any personal action, and none other, where the matter in difference doth exceed the value of three hundred pounds sterling, may appeal from such sentence, judgment or decree, unto their majesties in council, such appeal being made in time and security given according to the directions in their majesties' royal charter in that behalf, as is provided and enacted for judgments to be given as aforesaid, in other of their majesties' courts of judicature within said province.

Justices in courts of judicature to chancer forfeitures of bonds.

Provided also, any thing herein to the contrary contained notwithstanding, that the justices in any other of their majesties' courts of judicature, where the forfeiture of any penal bond is found, shall and hereby are empowered to chancer the same unto the just debt and damages.

And all processes already made shall be valid, and cases depending in chancery shall be proceeded in and carried on to a final issue.

CHAPTER XXVII.

AN ACT FOR THE RELIEF OF IDIOTS AND DISTRACTED PERSONS.

Selectmen or overseers of the poor, to make necessary provision for the relief of idiots, and distracted persons.

Be it enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as it shall happen any person to be naturally wanting of understanding, so as to be uncapable to provide for him or herself, or by the providence of God shall fall into distraction, and become non compos mentis, and no relations appear that will undertake the care of providing for them, or that stand in so near a degree as that by law they may be compelled thereto, in every such case the selectmen or overseers of the poor of the town or peculiar where such person was born, or is by law an inhabitant, be, and hereby are empowered and enjoined to take effectual care, and make necessary provision for the relief, support, and safety of such impotent or distracted person, at the charge of the town or place whereto he or she of right belongs, if the party has not estate of his or her own, the incomes whereof may be sufficient to defray the same; and the justices of the peace within the same county, at their general sessions, may order and dispose the estate of such impotent or distracted person to the best improvement and

advantage towards his or her support, as also the person to any proper work or service, he or she may be capable to be employed in, at the discretion of the selectmen or overseers of the poor. And where the estate of any such person consists of housing or land, in every such case the justices of the superiour court of judicature, upon application to them made, may, and hereby are empowered to license and authorize the selectmen or overseers of the town or place whereto such person belongs, or such others as the said justices shall think fit, to make sale of such housing or land, the produce thereof upon sale to be secured, improved and employed to and for the use, relief and safety of such impotent or distracted person, as the said justices shall direct, as long as such person shall live, or until he or she be restored to be of sound mind, and the overplus (if any be) to and for the use of the next and right heirs of such party.

Court of quarter sessions to order the estate of such persons for improvement.

The justices of the superiour court, to license the sale of housing or land of distracted persons, in case.

And the like power and authority is hereby granted unto the justices of the superiour court, with reference to any person or persons now under distraction, or non compos mentis, as well for the satisfying of the charges already past, as for what may be future, for the support, relief and safety of any such person.

CHAPTER XXVIII.

AN ACT AGAINST ADULTERY AND POLYGAMY.

WHEREAS the violation of the marriage covenant is highly provoking to God, and destructive to families,

SECT. 1. Be it therefore enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that if any man be found in bed with another man's wife, the man and woman so offending, being thereof convicted, shall be severely whipt, not exceeding thirty stripes, unless it appear upon trial, that one party was surprised and did not consent, which shall abate the punishment as to such party.

And if any man shall commit adultery, the man and woman that shall be convicted of such crime before their majesties' justices of assize and general gaol delivery shall be set upon the gallows by the space of an hour, with a rope about their neck, and the other end cast over the gallows, and in the way from thence to the common gaol shall be severely whipt, not exceeding forty stripes each; also every person and persons so offending shall for ever after wear a capital A of two inches long, and proportionable bigness,

Punishment for adulterers.

cut out in cloth of a contrary colour to their cloaths, and sewed upon their upper garments, on the outside of their arm, or on their back, in open view; and if any person or persons, having been convicted and sentenced for such offence, shall at any time be found without their letter so worn, during their abode in this province, they shall by warrant from a justice of the peace be forthwith apprehended and ordered to be publickly whipt, not exceeding fifteen stripes, and so from time to time, toties quoties.

Polygamy to be punished as felony.

SECT. 2. And be it further enacted by the authority aforesaid, that if any person and persons within this their majesties' province, being married, or which hereafter shall marry, do at any time after the first of July in this present year, one thousand six hundred ninety-four, presume to marry any person or persons, the former husband or wife being alive, or shall continue to live so married, that then every such offence shall be felony, and the person and persons so offending shall suffer death, as in cases of felony; and the party and parties so offending shall receive such and the like proceeding, trial and execution, in such county where such person or persons shall be apprehended, as if the offence had been committed in such county where such person or persons shall be taken or apprehended.

Saving for persons where husband or wife shall be absent seven years, &c.

Provided always, that this act, or any thing therein contained, shall not extend to any person or persons, whose husband or wife shall be continually remaining beyond the seas, by the space of seven years together, or whose husband or wife shall absent him or herself, the one from the other, by the space of seven years together in any part within their majesties' dominions, or elsewhere, the one of them not knowing the other to be living within that time.

Saving for persons divorced, or married within the age of consent.

Provided also, that this act, or any thing therein contained, shall not extend to any person or persons, that are or shall be at the time of such marriage divorced by any sentence had, or hereafter to be had, as the law of the province in that case has provided, or to any person or persons where the former marriage has been, or hereafter shall be, by such sentence had, declared to be void and of no effect, nor to any person or persons, for or by reason of any former marriage had or made, or hereafter to be had or made within the age of consent, that is to say, the man fourteen years of age, the woman twelve.

CHAPTER XXIX.

AN ACT TO ENABLE TOWNS, VILLAGES, AND PROPRIETORS IN COMMON AND UNDIVIDED LANDS, &c. TO SUE AND BE SUED.

WHEREAS, amongst other things in their majesties' royal charter for incorporation of this province, it is contained and granted in these words following, that is to say, "Provided nevertheless, and we do for us, our heirs and successors, grant and ordain that all and every such lands, tenements and hereditaments, and other estates, which any person or persons, bodies politick or corporate, towns, villages, colleges or schools, do hold and enjoy, or ought to have, hold and enjoy within the bounds aforesaid, by or under any grant or estate, duly made or granted by any general court formerly held, or by virtue of the letters patent herein before recited, or by any other lawful right or title whatsoever, shall be by such person or persons, bodies politick and corporate, towns, villages, colleges or schools, their respective heirs, successors and assigns for ever hereafter, held and enjoyed according to the purport and intent of such respective grant," &c.

And whereas, by one act of the general court, entitled an act for the regulating of townships, &c. amongst other things, it is enacted, that the proprietors of the undivided or common lands within each town or precinct in this province, where the same have been heretofore stated, each one's proportion being known, shall, and hereby are empowered to order, improve or divide in such way and manner as shall be concluded and agreed upon by the major part of the interested, and the proprietors of all undivided or common lands, not stated and proportioned as aforesaid, shall and hereby are empowered to manage, improve, divide and dispose of the same, as hath been or shall be concluded and agreed on by the major part of such proprietors,

Now for the better enabling the said persons, towns, villages, trustees for schools and proprietors aforesaid, to maintain, recover and defend their grants, lands, interests, and estates,

SECT. 1. Be it enacted and declared by the governor, council and representatives, in general court assembled, and by the authority of the same, that it shall and may be lawful for all and every the said persons, towns, villages, precincts, trustees for schools and proprietors in common and undivided lands, grants, and other estates or interests whatsoever, to sue, commence and prosecute any suits or actions in any

Persons, towns, villages, &c. to sue or defend in any court.

court proper to try the same, either by themselves or their agents or attorneys, to be appointed by such as have in them the major part of the interest, and in like manner to defend all such suits and actions as shall be commenced against them or any of them.

Towns, villages, &c. to choose agents or attorneys to prosecute for, or defend them.

SECT. 2. And further be it enacted by the authority aforesaid, that all and every town, village, and precinct, and proprietors in common or undivided lands, which shall have occasion to sue, or shall be sued, may at a meeting of the inhabitants of such town, village or precinct, or proprietors aforesaid, orderly warned, by the major vote of such as shall meet, choose agents or attorneys to prosecute for, or defend them, such choice being certified by the clerk of such town, village, precinct or proprietors, or by such other person as they shall appoint.

How summons shall be given to oblige towns &c. to answer.

And when any town, village, precinct or proprietors aforesaid, shall be sued, it shall be sufficient notice to oblige them to appear and answer, to leave a writ or summons with their clerk, or other principal inhabitant or proprietor, briefly declaring the case, fourteen days before the sitting of the court, where the case is to be heard, as in other actions is provided.

CHAPTER XXX.

AN ACT FOR REGULATING FERRIES.

To the intent that all ferries within this province be duly kept, and constantly attended, for the ends whereunto they are appointed,

Ferrymen to be licensed by the quarter sessions.

SECT. 1. Be it enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that henceforth no person or persons whatsoever, shall attempt to keep a ferry (so as to demand pay) without special license first had and obtained from their majesties' justices in quarter sessions of that county where such ferry is, who are hereby empowered to grant licenses to such persons as they shall judge meet for that service, in their respective counties, and to state the fare or prices of each ferry, both for man and beast, according to the nature and breadth of such river, or water they are to pass over, taking bond of each ferryman for the faithful discharge of his place (except such ferries as are already stated and settled, either by the court or towns to whom they apper-

tain; and all ferrymen are hereby enjoined to keep a good boat or boats in good repair, suitable to the waters they are to ferry over, and also to give ready and due attendance on passengers upon all occasions, on penalty of five shillings for every default of non-attendance, and for want of a good boat kept in good repair to pay five pounds, the one half to their majesties for and towards the support of the government, the other half to him or them that shall inform and sue for the same, before a justice of the peace, or at the quarter sessions respectively, besides what damage may accrue to any person through the ferryman's default.

To give bond.

Penalties for non-attendance, and not keeping good boats.

Sect. 2. And further it is enacted, that the general post that is settled for their majesties' and the country's service be readily despatched, and set over by all ferrymen where they shall come without any delay. And if any ferryman shall be complained of, and duly convicted before any justice of the peace, for delaying any post, and not forthwith ferrying of him over, he shall forfeit the sum of twenty shillings unto their majesties for and towards the support of the government.

Penalty for delaying the post.

And that boats be constantly kept on either side of the water at Charlestown ferry, for the more speedy transportation of passengers, the ferrymen on each side to have a separate interest, and that the ferry be not from henceforth leased out otherwise. And all the members of the general assembly shall be ferriage free at all ferries in their passing to and from the assembly, and shall be transported without any unnecessary delay, on pain of forfeiting twenty shillings as abovesaid.

Assemblymen to pass ferriage free.

CHAPTER XXXI.

AN ACT FOR GRAND JURORS SERVING AT THE QUARTER SESSIONS OF THE PEACE, AND PUNISHING DEFAULTS OF JURORS ATTENDANCE.

To the intent that due inquiry and presentment may be made unto the court of quarter sessions of the peace within the respective counties, of all misdemeanours, offences and breaches of law, proper to the cognizance of the said court, happening within such county, for the suppressing and punishing of the same, and that jurors may duly attend the service for which they are chosen,

Grand jurors to serve a full year.

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that the clerk of the peace of each several county shall annually, fifteen days at least before the day for holding of the court of quarter sessions of the peace for such county, issue out writs directed unto the constables of the respective towns within the same, requiring them or one of them forthwith to warn a meeting of the inhabitants duly qualified by law, for the choosing of one or more grand jurors, according to the number such town has been accustomed to send, or otherwise shall be appointed for them by the justices of the said court, and the person or persons so chosen, to warn to appear at the next court, and the following courts of quarter sessions successively, to be holden for the same county within the space of one year, and there to attend the service belonging to them, and to make return of the said writ with his doings thereon accordingly unto the said clerk's office, before the opening of the said court. And if any constable shall fail of performing his duty by the said writ required, or seasonably to return the same, he shall forfeit and pay the sum of forty shillings.

Their duty.

And the persons chosen and returned as aforesaid, appearing, shall be empanneled, and sworn a grand inquest for the body of such county, and shall continue in the said office for the space of one full year, and until others be chosen and sworn in their stead, whose duty it shall be to inquire and duly present the breach of all such good and wholesome laws, as are or shall be established within this province, and all such misdemeanours as are proper to their inquiry and the jurisdiction of the said court.

Forty shillings fine for non-appearance.

And if any person chosen to the said office, and summoned by the constable and so returned by him, shall make default in appearance, without reasonable excuse made, and allowed of by the court, the said court shall and may set a fine upon him, not exceeding the sum of forty shillings; and a new writ shall issue forth unto the town, to choose another in his room, and so likewise in case of the removal of any by death, or otherwise.

Petit jurors making default, to be fined, not exceeding 20s.

Act to prevent default in the appearance of jurors.

SECT. 2. And be it further enacted by the authority aforesaid, that if any person or persons legally chosen, and summoned to serve upon the petit jury, for trials in the superiour court of judicature, court of assize and general gaol delivery, or in any of the inferiour courts of common pleas, or of general sessions of the peace, being so returned by the constable under his hand, shall make default of appearance, and not attend the said service, without reasonable excuse made, and allowed of by such court, every person and persons so offending shall be fined by the said court, (who are hereby empowered thereto) not exceeding the sum of twenty shillings.

All fines and forfeitures accruing by virtue of this act, shall be paid in to the treasurer of the county where the same do arise, and be employed towards the defraying the publick charges of such county. Fines and forfeitures to come to the county.

And in case any person or persons sentenced to pay any of the said fines or forfeitures shall neglect or refuse so to do, the same shall be levied by distress and sale of the offender's goods or chattels, by warrant from the court that awarded the same, to be signed by the clerk of the said court, together with the incident charges arising for taking such distress, according to the fees by law allowed for levying of executions, and two shillings for the warrant, to be paid unto the clerk that granted the same. How to be levied.

And all grand jurors shall be allowed by the county treasurer the sum of two shillings per diem each man, during their attendance on any court; the time to be certified unto the county treasurer by the clerks of the respective courts. And no grand juror shall be compelled to serve more than one year in three; nor any petit juror, more than at one court within the compass of a year. Grand juror's allowance.

CHAPTER XXXII.

AN ACT TO PREVENT INCESTUOUS MARRIAGES.

Although this court doth not take in hand to determine what is the whole breadth of the divine commandment respecting unlawful marriages, yet for preventing of that abominable dishonesty and confusion which might otherwise happen,

Sect. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that no man shall marry any woman within the degrees hereafter named in this act, that is to say, no man shall marry his grandfather's wife, wife's grandmother, father's sister, mother's sister, father's brother's wife, mother's brother's wife, wife's father's sister, wife's mother's sister, father's wife, wife's mother's daughter, wife's daughter, son's wife, sister, brother's wife, wife's sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter, brother's son's wife, sister's son's wife, wife's brother's daughter, wife's sister's daughter. And if any man have Degrees of kindred forbidden marriage.

already married, or shall hereafter marry, or have carnal copulation with any woman who is within the degrees before recited in this act, every such marriage shall be and is hereby declared to be null and void. And all children that shall hereafter be born of such incestuous marriage or copulation, shall be for ever disabled to inherit by descent, or by being generally named in any deed or will by father or mother.

Penalty for any within the said degrees that shall marry.

SECT. 2. And be it further enacted by the authority aforesaid, that every man and woman who shall marry, or carnally know each other, being within any of the degrees before recited in this act, and shall be convicted thereof before his majesty's justices of assize and general gaol delivery, such man and woman so convicted, shall be set upon the gallows by the space of an hour, with a rope about their neck, and the other end cast over the gallows, and in the way from thence to the common gaol shall be severely whipped, not exceeding forty stripes each; also every person so offending shall for ever after wear a capital I of two inches long, and proportionable bigness, cut out in cloth of a contrary colour to their clothes, and sewed upon their upper garments on the outside of their arm, or on their back in open view. And if any person or persons, having been convicted and sentenced for such offence, shall at any time be found without their letter so worn, during their abode in this province, they shall by warrant from a justice of the peace be forthwith apprehended and ordered to be publickly whipped not exceeding fifteen stripes, and so from time to time, toties quoties.

Penalty on such whose marriage is declared null, to converse or dwell together.

SECT. 3. And be it further enacted by the authority aforesaid, that if any man or woman, whose marriage is by this present act declared null and void, shall be so hardy as to converse together as man and wife, or shall continue to dwell in the same house at any time after the space of forty days next after the publication of this present act, and be thereof convicted, or if any man and woman who shall hereafter be divorced, or their marriage declared to be null and void, according to the law of this province, shall cohabit, or converse together as man and wife, and be thereof convicted, all and every such persons shall suffer the pains and penalties mentioned in an act made and passed by the great and general court or assembly, at their sessions begun and held the thirtieth day of May, one thousand six hundred ninety-four, intitled an act against adultery and polygamy, which in and by the said act are set and imposed upon such as shall be taken in adultery. And it shall be in the power of the justices of the superiour court of judicature to assign unto any woman, so separated, such reasonable part of the estate of her late husband, as in their discretion the circumstances of the estate may admit, not exceeding one third part thereof.

And for the better preventing of clandestine marriages,

Sect. 4. Be it enacted by the authority aforesaid, in addition to the act intitled, an act for the orderly consummation of marriages, that no person other than a justice of the peace, and that within his own county only, or ordained minister, and that only in the town where he is settled in the work of the ministry, shall or may presume to join any persons together in marriage; nor shall any justice or minister join any persons in marriage other than such one or both of whom are inhabitants or residents in such county or town respectively, nor without certificate produced under the hand of the clerk of the several towns where the parties respectively dwell, that the names and intention of the said parties have been entered with him fifteen days before hand, and that due publication of such their intention or purpose has been made, in manner as by law is directed, nor without evident signification that the parents of such persons, or others whose immediate care or government they are under, are knowing of, and consenting to such marriage, on pain that every justice, minister, or other person offending against this act, shall for every such offence forfeit and pay the sum of fifty pounds, as a fine for, and towards the defraying of the publick charges, arising within such county where the offence is committed, to be sued for and recovered by the county treasurer, in any of his majesty's courts of record within the same, by bill, plaint or information, and shall, and are hereby for ever after disabled to join persons in marriage, and be further liable to the action and suit of the parent, guardian, or others whose immediate care and government either of the parties were under at the time of such marriage, that are aggrieved thereat and shall prosecute the same.

Justices and ministers not to marry persons out of their county or towns respectively.

Names and intention of marriage to be entered with the town clerk.

Penalty on justices or ministers offending.

Sect. 5. And be it further enacted, that if at any time the bans of matrimony betwixt any persons shall be forbidden, the publisher thereof shall forbear to proceed therein, until the matter have been duly inquired into, and heard before two of the justices of the same county, and that they certify under their hands, either that the cause was insufficient, or that it is removed.

Bans forbidden, not to be outasked till the matter be heard, &c.

And all marriages shall be registered by the town clerk of the same town where they are consummated; and every justice or minister as aforesaid shall return a note or certificate unto the clerk of the town of the names of all persons which they shall marry, and of the time when, within three months at furthest after consummation of the same, and shall allow and pay out of his fee unto the clerk for entering the same three pence; any law, usage or custom to the contrary notwithstanding.

Town clerk to register marriages.

Sect. 6. And be it further enacted by the authority aforesaid, that if any man shall wear women's apparel, or if any

Penalty on men and women that shall wear contrary apparel.

woman shall wear men's apparel, and be thereof duly convicted, they shall be corporally punished, or fined, at the discretion of the quarter sessions, not exceeding five pounds, to the use of the county where the offence is committed, towards the defraying of the county charges.

CHAPTER XXXIII.

AN ACT IN FURTHER ADDITION TO THE ACT, INTITLED AN ACT FOR THE SETTLEMENT AND SUPPORT OF MINISTERS.

SECT. 1. BE it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when at any time a church shall make choice of a minister, and present their choice unto the inhabitants of the town or precinct in a publick meeting duly warned and assembled for that purpose, to have their concurrence therein, and the inhabitants so assembled shall by a major vote deny their approbation of the church's choice, the church may call in the help of a council consisting of the elders and messengers of three or five neighbouring churches, which council are hereby empowered to hear, examine and consider the exceptions and allegations made against the church's election; and in case the council shall notwithstanding approve of the said election, such minister, accepting of the choice, and settling with them, shall be the minister of the town or precinct, who shall be in all respects supported and maintained, as by the said act is provided; but if otherwise, the church shall proceed to the election of another minister.

SECT. 2. And it is further declared, that no person, by reason of his voting in the church, shall be precluded from voting as an inhabitant of the town; any law, usage or custom to the contrary notwithstanding.

CHAPTER XXXIV.

AN ACT FOR THE BETTER DISCOVERY AND MORE EFFECTUAL SUPPRESSING OF UNLICENSED HOUSES.

FORASMUCH as divers ill disposed and indigent persons, the pains and penalties in the laws already made not regarding, are so hardy as to presume to sell and retail strong beer, ale, cider, perry, wine, rum, or other strong liquors or mixed drinks, and to keep common tippling houses, therein harbouring and entertaining apprentices, Indians, negroes, and other idle dissolute persons, tending to the ruin and impoverishment of families, and to all impiety and debaucheries, and if detected and convicted of any such offence, are unable to satisfy the fine imposed by law for the same, and cannot be punished by imprisonment without wrong to their families,

For remedy whereof, and the more effectual deterring and suppressing of such evil practices,

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as any person being duly convicted of keeping a common tippling house, or selling strong beer, ale, cider, perry, wine, rum, or other strong liquors or mixed drink by retail, without license first orderly had and obtained for the same, shall be unable to answer and satisfy the fine imposed by law for such transgression, together with the charge of prosecution, or that shall not pay such fine and charges, and likewise give bond for the good behaviour, if it be a second conviction, within the space of twenty-four hours next after sentence declared in that respect, it shall and may be lawful to and for two justices of the peace, or the court before whom the conviction shall be, to order such offender to be openly whipped with so many stripes as in their discretion shall be thought fit, not less than ten nor exceeding fifteen for one offence, and to restrain the offender in prison until the fine and charges as aforesaid are paid, or the order for corporal punishment be executed.

Persons unable to pay the fine to be whipped.

SECT. 2. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any grand jurors, constables, tithingmen, and the officers employed in and about the excise, ex officio to enter into the house and dependences thereof, of any such person as aforesaid, suspected of selling strong drink without license, having once been convicted thereof, and taking with them such assist-

Officers power to seize drink found in unlicensed houses.

ance as they shall think needful, to make search for strong drink, and finding any quantity of any kind of the drinks herein before mentioned, to seize and secure the same, so as it be within the space of one year next after such conviction, and to inform thereof at the next general sessions of the peace to be holden within the same county, or unto two justices of the peace, quorum unus, within the same; and if the quantity of drink so seized shall be judged by such court or justices to be more than for the necessary use of the family, and what their condition may reasonably allow them to expend, or otherwise to have in their custody, it shall and may be lawful to and for such court or justices to declare all such drink to be forfeited, one moiety thereof unto the party that seized and informed of the same, and the other moiety to the selectmen or overseers of the poor of the town where it was seized, to the use of the poor there, and to order the disposal thereof accordingly.

Appeal from the sentence of two justices.

Provided nevertheless, that any person aggrieved at the sentence of any two justices, for either of the offences beforementioned, may appeal therefrom unto the next general sessions of the peace within the same county; provided such appeal be claimed in due time, and security given in manner as the law in such cases directs.

CHAPTER XXXV.

AN ACT FOR TAKING OF AFFIDAVITS OUT OF COURT.

Forasmuch as it is often necessary that witnesses in civil causes be sworn out of court, when by reason of their going to sea, living more than thirty miles distant from the place where the cause is to be tried, age, sickness, or other bodily infirmity, they are rendered uncapable of travel, and appearing in person at the court, to the intent therefore that all witnesses may indifferently testify their certain knowledge and the whole truth in the cause they are to speak unto,

Adverse party to have notification.

Sect. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that for either of the reasons before mentioned, and not otherwise, every justice of the peace, or others lawfully commissionated and empowered thereto by two or more of the justices of the superiour or inferiour court respectively, may take affidavits out of court, so as a notification with reasonable time be first made out and delivered to the adverse party, if within twenty miles of the

place, or left at the place of his dwelling or usual abode, to be present at the time of taking such affidavit, if he think fit; and every such witness shall be carefully examined and cautioned to testify the whole truth, and being sworn, the justice shall attest the same, with the day, month, and year of the caption thereof, and that the adverse party was present, if so, or that a notification was sent him, and shall seal up the testimony and deliver it to the party, if desired, at whose request it was taken; and no person interested shall write or draw up the testimony of any witness in such cause, nor any attorney in his client's cause; and if it manifestly appear that any testimony be written or drawn up by any interested, or the attorney in the cause, or be returned from any justice of the peace by other hand than his own, into the court where the same is to be used, unsealed, or the seal having been broken up, all such testimonies shall be rejected by the court, and be utterly void and of no effect in law.

No person interested, or the attorney, to write affidavits.

Affidavits to be returned to the court sealed up.

Sect. 2. And be it further enacted by the authority aforesaid, that every justice of the peace shall be, and hereby is empowered, upon request to him made, to grant summons for the appearance of any witness before him in any civil or criminal cause, where such witness is bound to sea before the time of trial, and to take his deposition in such cause, the adverse party being present, or notification sent him as aforesaid.

Justices to grant summons for witnesses.

Provided nevertheless, that witnesses to bonds, specialties, letters of attorney, and other instruments in writing under the hand of the party executing the same, or to accompts or testimonies relating to persons out of this government, or to be sent beyond sea, may be sworn without such notification as aforesaid.

Witnesses to bonds and other writings may be sworn without notification.

Sect. 3. And be it further enacted by the authority aforesaid, that all affidavits relating to the possession of any houses or lands, or any other matter, in perpetuam rei memoriam, shall be made and taken before some court of record, or two or more justices of the peace, quorum unus.

Affidavits in perpetuam rei memoriam to be sworn in court or before two justices.

Sect. 4. And it is further enacted, that all persons forswearing themselves in any such affidavits taken as aforesaid, shall incur the same penalties as if they had been taken in open court.

Penalty for perjury.

CHAPTER XXXVI.

AN ACT FOR THE EQUAL DISTRIBUTION OF INSOLVENT ESTATES.

SECT. 1. BE it enacted by the lieutenant governor, council and representatives, in general court assembled, and it is enacted and ordained by the authority of the same, that when the estate of any person deceased shall be insolvent or insufficient to pay all just debts which the deceased owed, the same shall be set forth and distributed to and among all the creditors in proportion to the sums to them respectively owing, so far as the said estate will extend, saving that the debts due to the crown, the sickness and necessary funeral charges of the deceased are to be first paid, and the executor or administrator appointed to any such insolvent estate, before payment to any be made (except as aforesaid) shall represent the condition and circumstances thereof unto the judge for probate of wills, and granting of administrations; and the said judge shall nominate and appoint two or more fit and indifferent persons to make a true and equal appraisement of such estate, and administer an oath unto them for that purpose; and shall also nominate and appoint two or more fit persons to be commissioners with full power to receive and examine all claims of the several creditors, and how they are made out; and such commissioners shall cause the times and places of their meeting, to attend the creditors, for the receiving and examining of their claims, to be made known and published by posting up the same in some publick places in the shire town of that county where such deceased person last dwelt, and of the two next adjoining counties; and six, twelve, or eighteen months time, as the circumstances of any estate may require, shall be allowed by the judge unto the creditors, for bringing in their claims, and proving their debts, at the end of which limited time such commissioners shall make their report, and present a list of all the claims unto the said judge, who shall order them meet recompense out of the estate, for their care and labour in that affair; and the debts due to the crown, sickness and necessary funeral charges, as is herein before provided, being first subducted, shall order the residue and remainder of the estate to be paid and distributed to and among the other creditors that shall have made out their claims in due proportion to the sums unto them respectively owing, according as the estate will bear, saving unto the widow, if any be, her right of dower according to law in the houses and lands of the deceased, the widow's dower at

Manner of distribution.

Appraisers to be sworn.

Commissioners to receive the claims.

Saving of dower.

the expiration of her term to be also distributed among the creditors in a like proportion.

Provided, that notwithstanding the report of any such commissioners or allowance thereof made, it shall and may be lawful to and for the executor or administrator to contest the proof of any debt at the common law. Debts may be contested at common law.

And no process in law (except for debts due to the crown, sickness and funeral charges) shall be allowed against the executors or administrator of any insolvent estate, so long as the same shall be depending as aforesaid. Process suspended whilst the commission is depending.

And whatever creditor shall not make out his or her claim with such commissioners before the full expiration of the limited time, such person shall be for ever after debarred of his or her debt, unless he or she can find some further estate of the deceased, not before discovered and put into the inventory. Creditors excluded that bring not in their claims.

Sect. 2. And be it further enacted by the authority aforesaid, that every judge for probate of wills and granting administrations, within the respective counties, be, and hereby is fully authorized and empowered to call before him, and to require and administer an oath unto any person or persons probably suspected by any executor or administrator to have concealed, embezzled or conveyed away any of the money, goods or chattels left by the testator, or intestate, for the discovery of the same. And in case any such suspected person was betrusted by the person deceased, attended upon, or was otherwise conversant with or near unto him in the time of sickness, or left in possession of the estate, whereby to strengthen and make the suspicion more violent, and shall refuse to clear and acquit him or herself upon oath, it shall and may be lawful for, and the judge is hereby empowered to commit such person, so refusing to swear, unto the gaol of the county, there to remain until he or she shall comply to discharge him or herself upon oath as aforesaid, or be released by consent of the executor or administrator. Persons suspected of concealment or embezzlements to be sworn. Penalty for refusing.

Saving unto any person aggrieved at any sentence, order or decree, made by the judge of probate, liberty of an appeal unto the governor and council, such appellant giving bond in a reasonable sum with sufficient security to prosecute his appeal with effect, and to abide and perform the determination that shall be made thereupon. Appeal.

CHAPTER XXXVII.

AN ACT FOR MAKING OF LANDS AND TENEMENTS LIABLE TO THE PAYMENT OF DEBTS.

WHEREAS the estates of persons within this province do chiefly consist of houses and lands, which give them credit, some being remiss in paying of their just debts, and others happening to die before they have discharged the same,

Lands and tenements liable to execution.

SECT. 1. Be it therefore enacted and ordained by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that all lands or tenements belonging to any person in his own proper right in fee shall stand charged with the payment of all just debts owing by such person, as well as his personal estate, and shall be liable to be taken in execution for satisfaction of the same, where the debtor or his attorney shall not expose to view and tender to the officer personal estate sufficient to answer the sum mentioned in the execution, with the charges.

Execution duly served and recorded to make a good title.

And all executions duly served upon any such houses and lands, being returned into the clerk's office of the court out of which the same issued and there recorded, shall make a good title to the party for whom they shall be so taken, his heirs and assigns for ever. Also where the goods and chattels belonging to the estate of any person deceased shall not be sufficient to answer the just debts which the deceased owed, or legacies given, upon representation thereof, and making the same to appear unto the superiour court of judicature holden for or within the county where such deceased person last dwelt, the said court are hereby empowered to license and authorize the executor or administrator of such estate to make sale of all or any part of the houses and lands of the deceased, so far as shall be necessary to satisfy the just debts which the deceased owed at the time of his death, and legacies bequeathed in and by the last will and testament of the deceased. And every executor or administrator, being so licensed and authorized as aforesaid, shall and may, by virtue of such authority, make, sign and execute in due form of law, deeds and conveyances for such houses and lands as they shall so sell, which instruments shall make a good title to the purchaser, his heirs and assigns for ever.

Justices of the superiour court empowered to license the sale of lands, &c.

Debts to the crown to be first paid.

Provided nevertheless, that any debt or debts due to the crown from any such estate, shall be first secured and paid out of the same.

Fraudulent deeds to be void.

SECT. 2. And be it further enacted by the authority aforesaid, that when any person or persons shall make sale or other alienation of any lands or tenements to him of right belonging, with intent to defeat and defraud his creditors of their just debts not bona fide for good and valuable consideration truly paid, all such sales and alienations are to be deemed covinous and fraudulent, and shall be of no effect to bar any creditor from such debt as is to him owing.

CHAPTER XXXVIII.

AN ACT TO PREVENT THE DESTROYING AND MURDERING OF BASTARD CHILDREN.

WHEREAS many lewd women that have been delivered of bastard children, to avoid their shame, and to escape punishment, do secretly bury or conceal the death of their children, and after, if the child be found dead, the said women do allege that the said child was born dead, whereas it falleth out sometimes (although hardly it is to be proved) that the said child or children were murdered by the said women their lewd mothers, or by their assent or procurement,

Be it therefore enacted by the lieutenant governor, council and representatives, convened in general assembly, and it is hereby enacted by the authority of the same, that if any woman be delivered of any issue of her body, male or female, which, if it were born alive, should by law be a bastard, and that she endeavour privately, either by drowning, or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, that it may not come to light, whether it were born alive or not, but be concealed, in every such case the mother so offending shall suffer death, as in case of murder, except such mother can make proof by one witness at the least, that the child whose death was by her so intended to be concealed was born dead.

CHAPTER XXXIX.

AN ACT AGAINST HIGH TREASON.

Compassing or imagining the death of the king, &c.

Levying war against the king.

Counterfeiting the king's great seal, &c.

SECT. 1. BE it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that if any person or persons shall compass or imagine the death of our sovereign lord the king, or of our lady his queen, or of the heir apparent to the crown, or if any person shall levy war against our lord the king, or be adherent to the king's enemies, giving them aid and comfort in the realm, or elsewhere, and thereby be probably attainted of open deed by his peers, upon the testimony of two lawful and credible witnesses upon oath, brought before the offender face to face, at the time of his arraignment, or voluntary confession of the party arraigned, or if any person or persons shall counterfeit the king's great seal or privy seal, or the seal of this province, and thereof be duly convicted as aforesaid, then every such person and persons, so as aforesaid offending, shall be deemed, declared and adjudged to be traitors, and shall suffer pains of death, and also lose and forfeit as in cases of high treason.

Trials to be regulated according to the law of England, in cases of treason, &c.

SECT. 2. And be it further enacted by the authority aforesaid, that the trial of all and every person and persons whatsoever, accused, indicted and prosecuted for high treason and misprision of such treason, shall be regulated according to the act of parliament made in the seventh year of his present majesty's reign, entitled an act for regulating of trials in cases of treason and misprision of treason, and the party so accused, indicted and prosecuted, to be allowed the benefits and privileges in and by the said act granted and declared.

CHAPTER XL.

AN ACT IN ADDITION TO THE ACT FOR REGULATING FERRIES.

WHEREAS there is a constant recourse of travellers and others for passage over the ferries betwixt Boston and Charlestown, and betwixt Boston and Winnesimit, there-

fore for prevention of the great inconvenience and damage that doth or may happen to persons by being hindered and delayed at the said ferries, for want of speedy transportation over the same,

Stated hours for the ferry-boats passing at Winnesimit ferry.

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that the person or persons that are, or from time to time shall be employed for keeping Winnesimit ferry, shall constantly maintain a good boat or boats, in good repair, suitable for the said ferry on each side of the water; and that such boats, whether there be any passengers in the same or not, shall put off from their respective shores to go to the other side, upon each day in the week, the Lord's day excepted, at the hours of five, seven, nine and eleven o'clock before noon, and at one, three, five and seven of the clock after noon, throughout the whole year, so as it be within day-light, on pain that every such ferryman or ferrymen being complained of and convicted before any one or more of his majesty's justices of the peace of neglect of his duty, in not crossing the said ferry at the several times and hours before mentioned, shall forfeit and pay the sum of twenty shillings, one half to the informer or complainant, and the other half to the use of the poor of the town of Boston; and such justice or justices may restrain the offender or offenders, until he or they shall pay the said sum.

Penalty for ferrymen's neglect.

Posts, &c. to be speedily transported.

SECT. 2. And be it further enacted, that all posts and expresses for his majesty's service, and other persons having extraordinary business, as in cases concerning life and death, shall be speedily transported over the said ferry, at any time or season without delay, on the penalty aforesaid; any thing herein before contained to the contrary notwithstanding.

Saving for stormy seasons.

Provided nevertheless, that such ferryman or ferrymen shall not be obliged to put off from their respective shores and pass the said ferry, at any of the times or hours before stated, if it manifestly appear to be hazardous for them so to do, by reason of any storm or tempest, or that in the winter the ice do hinder the passing of any boat across the said ferry.

At Charlestown ferry, two boats not to lie on the same shore.

SECT. 3. And be it further enacted by the authority aforesaid, that when and so often as it shall happen, that the boats employed for the ferry between Boston and Charlestown shall be on the same shore, upon the landing of the second boat, the first shall forthwith put off and pass over to the other side, passengers or no passengers, on the like penalty herein before expressed, and to be disposed of as aforesaid, to the use of the poor of Boston or Charlestown respectively.

CHAPTER XLI.

AN ACT AGAINST PIRACY AND ROBBING UPON THE SEA.

WHEREAS divers great disorders, wicked practices, and depredations, have been and are frequently committed by several of his majesty's subjects, in and upon the seas, to the great damage and prejudice of his majesty's allies, and contrary to treaties of peace, and the good correspondence, which ought to be maintained amongst christian kings, princes, and states, is thereby lessened and impaired, and whereas also divers of his majesty's subjects have and do commit divers inhuman and hostile acts and depredations upon the subjects and allies of divers princes and states in foreign parts, in amity with his majesty, which, by reason of the remoteness of the place, where the fact was committed, can very rarely be proved by witness indifferent, and many times kill and murder such persons, being in the ship or boat where such offences are perpetrated, which should bear witness against them in that behalf, and whereas divers persons, to whom private commissions of war are granted, do many times take, rob, and spoil the ships, goods, merchandizes, and things belonging to the subjects of princes and states in amity with the crown of England, and burn, sink, or destroy such ships or vessels, wherein such goods, merchandizes, and things were taken, that the same may not be discovered and known, contrary to the intent and meaning of the granting of such commissions, and the instructions therewith given them, which disorders, wicked practices, and depredations, ought to be detested and abhorred by all his majesty's subjects, and for prevention and reformation thereof, be it enacted by the lieutenant governor, council and representatives, convened in general assembly, and it is hereby enacted by the authority of the same, that all treasons, felonies, robberies, murders, and confederacies, hereafter to be committed in or upon the sea, shall be inquired, tried, heard, determined, and judged, in such counties and places as shall be limited by commission or commissions from the governor, lieutenant governor, or commander in chief for the time being, of this province, by and with the advice and consent of the council, to be directed for the same, in like manner and form, as if such offence or offences had been committed or done in or upon the land; and such commissions shall be had under the seal of the province, directed to three or more substantial persons, from time to time, and as oft as need shall require, to hear and determine such

Treasons, felonies, robberies, &c. committed on the sea, to be heard and judged in such counties, and as shall be limited by commission.

offences after the common course of the laws of this province used for treasons, felonies, robberies, murders, and confederacies, done and committed upon the land, within the same.

Such offences to be inquired of by the oath of twelve men.

SECT. 2. And be it enacted by the authority aforesaid, that such persons, to whom such commission or commissions shall be directed, or three of them at the least, shall have full power and authority to inquire of such offences, by the oaths of twelve good and lawful inhabitants in the shire, limited in their commission, in such like manner and form, as if such offences had been committed upon the land within the same shire; and that every indictment, found and presented before such commissioners, of any treasons, felonies, robberies, murders, manslaughters, or such other offences, committed or done in and upon the seas, shall be good and effectual in the law. And if any person or persons happen to be indicted for any such offence hereafter, to be done in and upon the seas, or in any other place above limited, that then such order, process, judgment, and execution, shall be used, had, done, or made, to and against every such person and persons, so being indicted and found, as against traitors, felons, and murderers, for treason, felony, robbery, murder, or such other offences done upon the land, as by the laws of this province is or shall be accustomed; and that the trial of such offence or offences, if it be denied by the offender or offenders, shall be had by twelve lawful men inhabiting in the shire, limited in such commission, which shall be directed, as is aforesaid. And such as shall be convicted of any such offence or offences by verdict, confession, or process, by authority of any such commission, shall have and suffer such pains of death, losses of goods and chattels, as if they had been attainted and convicted of any treasons, felonies, or robberies, or other the said offences done upon the land, for and towards the support of the government within this his majesty's province.

A like process to be made and used, as for such offences done upon the land.

Saving for persons compelled by necessity, that shall take victuals, &c. that may be conveniently spared.

Provided always, that this act extend not to be prejudicial or hurtful to any person or persons, for taking any victual, cables, ropes, anchors, or sails, which any person or persons (compelled by necessity) taketh of, or in any ship, which may conveniently spare the same, so as the same person or persons pay out of hand for the same victual, cables, ropes, anchors, or sails, money or money worth, to the value of the thing so taken, or do deliver for the same a sufficient bill obligatory, payable in reasonable time, not exceeding twelve months, and that the makers of such bills well and truly pay the same debt at the day to be limited within the said bills.

SECT. 3. And be it also further enacted by the authority aforesaid, that if any suspected person or persons shall hereafter bring into this province any foreign coins, gold, bullion, merchandize, and other treasure, supposed to be taken in

Suspected persons to be seized and secured, as also their treasure.

and upon the seas, in manner aforesaid, that then, and in every such case, the next justice or justices of the peace, or other magistrate then present upon the place, are hereby required and empowered, upon his or their own knowledge, or information given to him or them thereof, to grant warrants to the sheriff or constable of the place, to apprehend and seize every such person or persons, his and their money, gold, bullion merchandize, and treasure, and to bring the same before such justices or magistrates, to be examined and proceeded against, as the law directs; and in case such suspected person or persons cannot produce a certificate, or produce two evidences, where and how he came by such monies, gold, bullion, merchandize, or treasure, then such justices or magistrates may commit such person or persons to gaol, without bail or mainprize, until he or they be discharged by law, and secure such monies, gold, bullion, merchandize, or treasure, to be disposed of as the law directs. And every such sheriff, or other officer, to whom such warrant or warrants shall be directed, shall require and take such a number of persons, with arms or otherwise, as he or they shall think meet, for the seizing and apprehending such person or persons, and carrying him or them before such justice or magistrate, as aforesaid; and every person or persons, refusing or neglecting to be aiding and assisting to such officer or officers, in the execution of such warrant or warrants, shall be proceeded against as the law directs, and in such manner, and under such penalties, as in other the like cases is accustomed and provided; and every such officer or officers, offending or neglective in his office, and execution thereof, shall be punished as the law also directs.

Officers to be assisted in making such seizures.

Penalty for neglect.

Private men of war to bring what they take into some of his majesty's ports, for adjudication, according to their instructions.

Sect. 4. And it is hereby further enacted, that if any person or persons, to whom such private commission or commissions is, are, or shall be granted, do hereafter take, surprize, and seize any ship, vessel, goods, merchandizes, and things, of the subjects of any prince or state whatsoever, and do not bring such ship, vessel, goods, merchandizes, and things, into some port or ports belonging to his majesty, pursuant to their commissions and instructions, there to receive legal condemnation, unless hindered by the inevitable providence of God, whereof sufficient proof shall be made, or produce two at least of the company belonging to the ship or vessel so taken, to manifest that the ship, vessel, and goods so taken, belonged, at the time of the caption thereof, to the subjects of the enemies of the crown of England, shall be prosecuted as robbers and felons, and as if no such commission or commissions had been granted to them, and under such pains and penalties, as before in this act is mentioned, inflicted, and declared.

CHAPTER XLII.

AN ACT RELATING TO TOWN RATES OR ASSESSMENTS.

Whereas divers constables and collectors of town rates or assessments are defective and negligent of their duty, in not timely paying of the same, as by the warrants or estreats to them committed they are required,

For redress whereof,

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that the constables or collectors within the several towns in this province, who have had, or hereafter shall have any rates or assessments for the defraying of town charges, orderly made and committed unto them to collect, the accounts and payment whereof are not issued, or that at any time or times hereafter shall not pay in and issue their accounts thereof with the treasurer of such town, or other person appointed by the selectmen to be a receiver of the same, by the time prefixed in the warrants to them respectively given for the collecting and paying in thereof, or within the space of one month next after the expiration thereof, every such defective constable or collector shall be liable to the action or suit of the treasurer or receiver of such town; and such treasurer or receiver is hereby empowered and authorized to sue for and recover all such rates and assessments, or any arrears thereof, of and from the constables or collectors respectively to whom the same were committed, and that have or shall neglect their duty in that regard, by action, bill, plaint or information, in any of his majesty's courts of record; any law, usage or custom to the contrary notwithstanding.

Constables or collectors of town rates not issuing their accounts thereof by the time prefixed in their warrants, to be liable to suit.

CHAPTER XLIII.

AN ACT EMPOWERING JUSTICES OF THE PEACE TO DECIDE DIFFERENCES NOT EXCEEDING FORTY SHILLINGS.

Sect. 1. Be it enacted and ordained by the lieutenant governor, council and representatives, convened in general assembly, and it is hereby enacted and ordained by the au-

Justices of the peace to grant summons, capias, or attachment for matters triable before them.

thority of the same, that all manner of debts, trespasses and other matters, not exceeding the value of forty shillings, wherein the title of land is not concerned, shall and may be heard, tried, adjudged and determined, by any of his majesty's justices of the peace within this province, in their respective precincts, who are hereby empowered, upon complaint made of any such debt, trespass, or other matter as aforesaid, to grant summons, capias or attachment against the party complained of, directed to the sheriff or marshal of the county, or either of their deputies, or constables of the town wherein such party lives, for which summons, capias or attachment, the justice shall be paid one shilling, and the officer for serving the same, one shilling, and no more; and in case of non-appearance upon summons duly served, being so returned by the officer, such justice may issue out a warrant of contempt directed to the sheriff, or marshal, or other officer as aforesaid, to bring the contemner before him, as well to answer the said contempt as the plaintiff's action, and may, if he see cause, fine such contemner, not exceeding ten shillings, to be accounted for to the treasurer of the county towards defraying of county charges; and after judgment given in any case, may grant an execution or warrant of distress directed to the sheriff or marshal, or other officer as aforesaid, to levy the said fine, debt or damage, with charges, upon the defendant's goods or chattels; and such officer by virtue thereof shall expose the same to sale, returning the overplus, if any be, to the defendant; and for want of such distress to take the body of the defendant, and him to carry and convey to the common gaol of the county or precinct, there to remain until he hath satisfied the said fine, debt or damage, with charges; and in case such complainant be non-suited, or judgment pass against him, then the said justice is hereby empowered to assess to the defendant reasonable costs against such complainant, to be levied and recovered in manner and form above expressed.

Fee for a writ and serving.

Fine for contempt in not appearing upon summons.

Writs to be served seven days before trial.

Provided always, that all summons, capias or attachment, before such justice of the peace, shall be served and executed at least seven days before the time of trial or hearing.

Party aggrieved to appeal to the inferiour court.

Provided also, that the party aggrieved shall have liberty to appeal to the next inferiour court of common pleas to be holden for the same county, he entering into recognizance with one sufficient surety in the value of the debt or damage sued for, and sufficient to answer all costs to prosecute the said appeal there with effect, and to abide the order of the said court where such case shall be tried, and receive a final issue and determination.

Party appealing to bring the whole case.

And the party appealing shall bring the copies of the whole case to the court appealed to, where each party shall be allowed the benefit of any further plea or evidence; and

if upon such new plea or evidence the judgment happen to be reversed, the appellant shall have no costs granted for the first trial, and such appellant shall also give in the reasons of his appeal unto the justice appealed from, in writing, seven days inclusively before the sitting of the court appealed to; and all justices are hereby required to keep fair records of all their proceedings from time to time.

Reasons of appeal to be given in seven days before the trial.

SECT. 2. And be it further enacted by the authority aforesaid, that the clerk of any town within this province may, and hereby is empowered to grant replevins, summons or attachment for any matter or cause triable before any justice of the peace, and summons for witnesses, and to direct the same to the constables of such town, or to the party to be summoned for witnesses respectively; and the constable or constables are hereby required to execute such replevins, summons or attachments accordingly, and to make due return thereof.

Clerks of towns to grant replevin, &c.

CHAPTER XLIV.

AN ACT AGAINST MURDER.

BE it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that whosoever shall commit wilful murder upon premeditated malice or hatred, and be thereof convicted, the person or persons so offending shall be put to death.

CHAPTER XLV.

AN ACT AGAINST RAVISHMENT OR RAPE.

BE it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that if any man shall ravish any woman, committing carnal copulation with her by force against her will, or if any man shall unlawfully and carnally know and abuse any woman-child under the age of ten years, every

person and persons offending in either of the cases before-mentioned, being thereof convicted, shall be accounted felons, and shall be adjudged to suffer the pains of death, as in cases of felony.

CHAPTER XLVI.

AN ACT FOR THE PUNISHMENT OF BUGGERY.

For avoiding of the detestable and abominable sin of buggery with mankind or beast, which is contrary to the very light of nature,

Be it enacted and declared by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same it is enacted, that the same offence be judged felony, and such order and form of process therein to be used against the offenders as in cases of felony; and that every man being duly convicted of lying with mankind as he lieth with a woman, and every man or woman that shall have carnal copulation with any beast or brute creature, the offender and offenders in either of the cases before mentioned, shall suffer the pains of death, and the beast shall be slain and burned.

CHAPTER XLVII.

AN ACT AGAINST ATHEISM AND BLASPHEMY.

Be it declared and enacted by the lieutenant governor, council and representatives, convened in general court or assembly, and it is enacted by the authority of the same, that if any person shall presume wilfully to blaspheme the holy name of God, Father, Son, or Holy Ghost, either by denying, cursing or reproaching the true God, his creation or government of the world, or by denying, cursing or reproaching the holy word of God, that is, the canonical Scriptures contained in the books of the Old and New Testament, namely, Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, Samuel, Samuel, Kings, Kings,

Chronicles, Chronicles, Ezra, Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, The Song of Solomon, Isaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zechariah, Malachi, Matthew, Mark, Luke, John, Acts, Romans, Corinthians, Corinthians, Galatians, Ephesians, Philippians, Colossians, Thessalonians, Thessalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, Revelation, every one so offending shall be punished by imprisonment, not exceeding six months, and until they find sureties for the good behaviour, by sitting in the pillory, by whipping, boring through the tongue with a red hot iron, or sitting upon the gallows with a rope about their neck, at the discretion of the court of assize, and general gaol delivery, before which the trial shall be, according to the circumstances, which may aggravate or alleviate the offence.

Provided, that no more than two of the forementioned punishments shall be inflicted for one and the same fact.

CHAPTER XLVIII.

AN ACT FOR REGISTERING OF DEEDS AND CONVEYANCES.

For the prevention of clandestine and uncertain sales of houses and lands, and to the intent it may be the better known what right, title or interest persons have in or to such estates as they shall offer to sale,

Deeds executed by signing, sealing, acknowledgement and record, to be valid. No bargain, sale, &c. made three months next after this act to be good against any but the grantor, without being acknowledged and recorded.

Sect. 1. Be it enacted and declared by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that henceforth all deeds or conveyances of any houses or lands within this province, signed and sealed by the party or parties granting the same, having good and lawful right or authority thereto, and acknowledged by such grantor or grantors before a justice of the peace, and recorded at length in the registry of the county where such houses or lands do lie, shall be valid to pass the same, without any other act or ceremony in the law whatsoever.

And that from and after three months next after publication of this act, no bargain, sale, mortgage or other conveyance of houses or lands made and executed within this province, shall be good and effectual in law to hold such houses or lands against any other person or persons, but the grantor or grantors, and their heirs only, unless the deed or

deeds thereof be acknowledged and recorded in manner as is before expressed.

Proof of a deed by witnesses, in case, to be equivalent to acknowledgment.

Provided nevertheless, that when and so often as it shall happen any grantor to live in parts beyond sea, or to be removed out of this province, or to be dead before any deed or conveyance by him or her made, be acknowledged as aforesaid, in every such case, the proof of such deed or conveyance made by the oaths of two of the witnesses thereto subscribed, before any court of record within this province, shall be equivalent to the party's own acknowledgment thereof.

Penalty for persons refusing to acknowledge their deeds.

SECT. 2. And be it further enacted by the authority aforesaid, that if any grantor or vendor of any houses or lands shall refuse to acknowledge, as is aforesaid, any grant, bargain, sale or mortgage, by him or her signed and sealed, being thereunto required by the grantee or vendee, his, her or their heirs or assigns, it shall be lawful for any justice of the peace, within the county where such grantor or vendor lives, upon complaint made, to send for the party so refusing, and if he or she persist in such refusal, to commit him or her to prison without bail or mainprize, until such party shall acknowledge the same, it being first made appear and proved to be the act and deed of the same party by the oath of one or more of the witnesses thereto subscribed; and such grantee or vendee filing a copy of his deed so proved in the register's office, shall thereby secure his title in the mean time, and the same shall be accounted sufficient caution to every other person and persons against purchasing the estate in such deed mentioned to be granted.

Saving for dower.

Provided, that nothing in this act shall be construed, deemed or extended to bar any widow of any vendor or mortgagor of lands or tenements, from her dower or right in or to such lands or tenements, who did not legally join with her husband in such sale or mortgage, or otherwise lawfully bar or exclude herself from such her dower or right.

How mortgages shall be discharged.

SECT. 3. And it is further enacted by the authority aforesaid, that any mortgagee of any lands or tenements, his or her heirs, executors or administrators, having received full satisfaction and payment of all such sum and sums of money as are really due to him by such mortgage, shall, at the request of the mortgagor, his heirs, executors or administrators, acknowledge and cause such satisfaction and payment to be entered in the margin of the record of such mortgage in the register's office, and shall sign the same, which shall forever thereafter discharge, defeat and release such mortgage, and perpetually bar all actions to be brought thereupon in any court of record; and if such mortgagee, his or her heirs, executors or administrators shall not within ten days next after request in that behalf made, and tender of his, her or their reasonable charges, repair to the regis-

ter's office, and there make and sign such acknowledgment as aforesaid, or otherwise sign and seal a discharge of the said mortgage, and release and quit claim to the estate therein mentioned to be granted, and acknowledge the same before a justice of peace, he, she or they so refusing, shall be liable to make good all damages for want of such discharge or release, to be recovered by action or suit in any court of record; and in case judgment pass against the party so sued, he, she or they so cast shall pay unto the adverse party treble costs arising upon such suit.

Clerk of the inferiour court to be register of deeds.

SECT. 4. And be it further enacted and declared by the authority aforesaid, that the clerk of the inferiour court of pleas in each respective county shall also be the register of deeds and conveyances, and shall fairly enter and record at length all deeds, conveyances and mortgages of any lands, tenements, rents and other hereditaments, lying and being within the same county, made, executed, acknowledged or proved in manner as is aforesaid, which shall be brought to him to record, and shall on receipt thereof into the office, note thereupon the day, month and year when he received the same, and the record shall bear the same date; and every such register, before he execute the said office, shall be sworn before one or more of the justices of such court, well, truly, and faithfully to execute the same; and it shall and may be lawful to and for every register aforesaid, to ask and receive for entering and recording any deed, conveyance or mortgage, twelve pence for the first page, and eight pence a page for so many pages more as it shall contain, and no more, accounting after the rate of twenty-eight lines, of eight words in a line to each page, and proportionably for so much more as shall be under a page, and six pence for his attestation on the original, of the time, book and folio where it is recorded; and for discharge of a mortgage as aforesaid, one shilling and no more.

To be sworn.

Register's fees.

Deeds executed according to former laws and usage valid.

SECT. 5. And be it further enacted and declared by the authority aforesaid, that all deeds of bargain, sale or mortgage heretofore made and executed, according to former laws and usage, shall be valid and effectual.

CHAPTER XLIX.

AN ACT OF LIMITATION FOR QUIETING OF POSSESSIONS.

WHEREAS a good and beneficial act was made by the late governor and company of the colony of the Massachusetts Bay, in the year of our Lord God one thousand six hundred fifty-seven, in the words following, that is to say, "that any person or persons that hath either himself or by his grantees or assigns, before the law made for direction about inheritances, bearing date October the nineteenth, one thousand six hundred fifty and two, possessed and occupied as his or their own proper right in fee-simple any houses or lands within this jurisdiction, and shall so continue, whether in their own persons, their heirs or assigns, or by any other person or persons from, by or under them, without disturbance, let, suit or denial legally made by having the claim of any person thereto entered with the recorder of the county where such houses or lands do lie, with the names of the persons so claiming, and the quantity, bounds of the lands or houses claimed, and such claim prosecuted to effect within the term of five years next after the twentieth of May one thousand six hundred and fifty-seven, every such proprietor, their heirs and assigns shall for ever after enjoy the same without any lawful let, suit, disturbance or denial by any after claim of any person or persons whatsoever, any law or custom to the contrary notwithstanding," which aforerecited act having by experience been found to be of great benefit and service to his majesty's subjects within the said colony, and preventing many contests and lawsuits which otherwise would have risen by reason of a neglect in many persons to observe a legal course and method for the passing and confirmation of sales and alienations,

And whereas sundry persons having a just and equitable right and title unto estates in housing or lands, either acquired by purchase or otherwise accruing unto or settled upon them since the passing of the aforerecited act, may want formal conveyances and assurances in the law for the same, or the deeds, instruments, or other writings concerning such estates may be defective, or imperfectly made and executed, whereby such persons may be in danger of being deprived and evicted out of their honest and just rights and possessions,

For prevention whereof, and for the further quieting of possessions, and settling of titles,

Quiet possession from the first of October 1692, until the first of October 1704, to give a right.

SECT. 1. Be it enacted and declared by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that every person and persons who were possessed in his and their own proper right of any houses or lands within this province upon the first day of October, in the year of our Lord God one thousand six hundred ninety-two, and all others deriving from, by or under him or them, continuing the possession of such houses or lands until the first day of October, which will be in the year of our Lord God one thousand seven hundred and four, without molestation or disturbance by claim made thereto, and action brought and prosecuted for the same with effect, shall by virtue of such possession, have, hold and enjoy such houses or lands unto him or them, his and their heirs and assigns for ever in fee; and all actions and process to be thereafter brought for the same, are hereby excluded and for ever debarred.

Saving for the king's right.

Provided always, that there shall be a saving of his majesty's rights, and all publick lands belonging to the province, not orderly disposed of.

Other savings.

Provided also, that this act shall not be understood to bar the title of any infant, feme covert, or person non compos mentis, imprisoned, or in captivity, who shall be allowed the term of seven years next after such imperfection removed to pursue their claim or challenge to any houses or lands wherein they have interest or title; and the like time of seven years shall be allowed to persons having an estate in reversion in any houses or lands from the time such reversion falls, to recover their right; and persons beyond sea shall be allowed the term of ten years from the publication of this act to pursue their claim or challenge to any houses or lands as aforesaid.

Five years time allowed from and after the ending of the war with the Indians, to lay claim to lands lying to the eastward of Piscataqua river, and in other the frontiers.

And forasmuch as divers towns and settlements in the eastern parts of this province have been deserted and broken up by reason of the rebellion and war made by the Indians, and sundry persons in other the frontier towns, particularly enumerated in an act of the general assembly, have by means thereof been driven from their habitations and improvements,

SECT. 2. Be it therefore further provided and declared by the authority aforesaid, that the limitation of time for the continuance of possession by this act prefixed, shall not extend or be understood to extend unto any houses or lands lying to the eastward of Piscataqua river, or in other the frontiers; but the same time shall be, and hereby is enlarged and lengthened out for the space of five years next after the ending of the war with the Indians, during which space all persons may pursue their right and claim to any houses and

Lands purchased of Indians without orderly allowance, &c. are not confirmed by this act.

lands lying in those parts and places and every of them; and that no person or persons pretending right or title in or to any lands lying within this province purchased of any Indian or Indians, without orderly allowance and confirmation thereof had, according to former laws and usage of the several late colonies of Massachusetts and New Plymouth, and Province of Maine respectively, shall have or receive any benefit by this act with reference to such lands.

CHAPTER L.

AN ACT TO PREVENT ENCROACHMENTS UPON HIGHWAYS, STREETS, &c.

Forasmuch as divers incumberances and encroachments have been made in and upon the common roads, highways and streets heretofore laid out in several towns within this province, for redress whereof,

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that henceforth no edifice, building or fence whatsoever, shall be raised, erected, built, or set up in, upon, or over any of the said roads, highways, streets, lanes or alleys, in any town within this province, or any part of any of them, whereby to straiten the passage or any ways lessen the full breadth of any such roads, highways, streets, lanes or alleys; and if any edifice, building or fence whatsoever shall be raised, erected, built or set up, upon, in or over any such road, highway, street or alley, contrary hereunto, every such edifice, building or fence shall be deemed and held to be a common nuisance; and the court of general sessions of the peace for the county in which such town doth lie, upon complaint, and making out the same before them, are hereby empowered to order and cause such edifice, building or fence to be taken down, demolished and removed; and also to cause to be removed all such encroachments, or incumberances as heretofore have been made, upon, in or over any common road, highway or street as aforesaid; and the charge thereof to be answered and paid by disposing of so much of the materials, as shall be necessary to satisfy the same.

Provided nevertheless, that this act shall not be intended or construed to intend the prohibiting of the setting up of any conduit, watch house, cage or stocks, for publick use, in or upon any highway or street within any town.

CHAPTER LI.

AN ACT FOR PROVIDING OF POUNDS, AND TO PREVENT RESCOUS AND POUND BREACH.

Each town to to maintain a sufficient pound.

SECT. 1. BE it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that there shall be a sufficient pound or pounds made and maintained, from time to time, in every town and precinct within this province, in such part or places thereof as the selectmen shall direct and appoint, at the cost and charge of such town or precinct, for the impounding and restraining of all swine, cattle or sheep, liable to be impounded or restrained, for any of the causes herein after mentioned.

For what causes cattle, &c. are to be impounded.

And that it shall and may be lawful to and for any other person or persons, as well as the haywards or field drivers, to take up and impound, or cause to be impounded, any swine, neat cattle, horses or sheep, as shall be found damage feasant in any corn field, or other inclosure, or swine found unyoked or unringed, neat cattle, horses or sheep going upon the common, not allowed to feed there by the major part of the propriety, who are empowered to permit the same, any law to the contrary notwithstanding; and the owners or claimers of any such creatures impounded as aforesaid shall pay the fees set in and by an act, intitled an act for regulating of fences, cattle, &c. unto the pound-keeper, before they be delivered out of pound, as also the fee to the party impounding, and damage to the party injured, unless such owner or claimer shall think fit to replevy his creatures impounded, and give sufficient bond with one or more sureties to prosecute the replevin with effect in law, either before a justice of the peace, within fifteen days inclusive from the date of such replevin, or at the next inferiour court of common pleas to be holden within the same county, according to the value and damages alleged to be suffered, and to pay all such costs and damages as shall be awarded against him.

Fee for impounding.

The owner of creatures impounded to be notified thereof (if known) if not the creatures [to be cried and posted up.

And every person impounding any swine, neat cattle, horses or sheep shall give present notice thereof unto the owner, if known, or leave a notification thereof in writing at his house or place of usual abode, or if unknown, shall cause the same to be publickly cried or posted up in some publick place in such town, and in the two next neighbouring towns, from whence it may be most likely such creatures came, and shall also cause the creatures so impounded

Fee for crying.

to be relieved with suitable meat and water, the charge whereof shall be paid by the owner or owners, as also of the crying of them, after the rate of three pence per head, for a number not exceeding twelve, and no more than three shillings for a greater number; and if no owner or claimer appear within the space of three days next after the impounding of any such creatures, then the person or persons so restraining of them shall proceed with them as the law provides respecting strays.

After three days, to be proceeded with as strays.

Penalty for a rescous.

Sect. 2. And be it further enacted by the authority aforesaid, that if any person or persons shall rescue any swine, neat cattle, horses or sheep taken up as aforesaid, out of the hands of the hayward, or other person being about to drive them to the pound, whereby the party injured may be liable to lose his damages, and the law be eluded, the party so offending shall, for such rescous, forfeit and pay the sum of forty shillings to the use of the poor of the town or precinct where the offence is committed, besides all just damages unto the party injured, to be recovered by action, bill, plaint or information in any of his majesty's courts of record. And if any person or persons shall make any pound breach, or by any other indirect ways or means howsoever, convey or deliver any creatures impounded, out of the pound, the party so offending, being duly convicted thereof, shall forfeit and pay the sum of five pounds to the use of the poor of the town or precinct where the offence is committed, as also all just damages to the party injured by such creatures, to be had and recovered in manner as aforesaid. And if such rescous, pound breach, or conveying of creatures out of the pound, happen to be committed by any apprentices or persons under age, not having of their own wherewith to satisfy the law, and their parents or masters refuse to pay the fine and damages which the law in such case does inflict, it shall and may be lawful to and for the justices before whom such action or plaint shall be depending, upon a due conviction of the person or persons complained of and prosecuted for such offence, to commit him or them to the next gaol in the county where the offence is done, there to remain till satisfaction be made as above said, or otherwise may punish such offender by imprisonment not exceeding sixty days, in lieu of the fine, and leave the party injured to his remedy at law, to recover his damage of the parent or master of such child or apprentice, which such parent or master respectively shall be liable to have recovered of him upon action to be therefor brought, and execution to be accordingly awarded upon judgment given in that respect.

Penalty for pound breach.

Committed by apprentices or persons under age, how to be punished.

Sect. 6. And be it further enacted by the authority aforesaid, that when and so often as any trespass or trespasses shall be done in common or general fields, not being sufficiently fenced in as the law directs, the party injured shall forthwith

procure two sufficient persons of good repute and credit to view and adjudge of the damage done, giving notice of such trespass unto the owner or claimer of the beast or cattle that did the same, (if known and resident in the same town or near by) that he may be present and nominate one of the appraisers, if he see cause, and the damage to be answered according to such estimation. Trespass done in common or general fields.

And where damage happens through the insufficiency of the fence, the owner or occupier of the land to which the defective fence belongs shall be liable to answer and make good all such damage. The owner of defective fence to make [good damages.

CHAPTER LII.

AN ACT FOR PREVENTING OF TRESPASSES.

SECT. 1. BE it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that all and every person and persons who shall unlawfully cut or take away any grass, corn or grain, growing, or rob any orchard or garden, or break or cut, pull down or remove any hedge, pale, rail or fence, or that shall hurt, or dig, or pull up, or take away any grafts or fruit trees, and their procurers or receivers knowing the same, being thereof convict by confession of the party, or by the testimony of sufficient witnesses upon oath before any court, or any one justice of the peace in the county where the offence shall be committed, shall pay unto the party injured such recompense as by the court or justice before whom the trespass is found, shall be awarded. Robbers of orchards, gardens, &c. how to be punished.

SECT. 2. And be it further enacted by the authority aforesaid, that if any person or persons shall cut or carry off any manner of wood, underwood, timber, poles, or trees standing, lying or growing on the land of any others, or off or from the commons of any town, other than that to which he doth belong, or within the same town, having no right or privilege there, without leave or license from the major part of the propriety of such commons, or the owner or owners of the land whereon such wood, underwood, timber, poles or trees were standing, lying or growing, every person so offending shall forfeit and pay unto the party or parties injured or trespassed upon the sum of twenty shillings for every tree of one foot over, and ten shillings Penalty for cutting or carrying off any trees, wood, &c. from off another man's land, or off the common.

for every tree or pole under that bigness, and for other wood or underwood, treble the value thereof, to be recovered by action, bill, plaint or information, before any justice of the peace in the county where the offence is committed, if the forfeiture exceed not forty shillings, but if it be above that value, then before the inferiour court of common pleas within the same county; and if any person shall be convict of such offence a second time, he shall forfeit and pay to the use of the poor of the town where the offence is committed the sum of twenty shillings, or suffer one month's imprisonment over and above the forfeiture abovesaid, or damages to the party injured.

Forfeiture upon a second conviction.

Children or servants offending against this act, how punished.

Sect. 3. And be it further enacted by the authority aforesaid, that if any children or servants shall offend against this act in any of the particulars therein mentioned, and their parents or masters refuse to answer the forfeiture or damage awarded against them, they shall be punished by whipping, setting in the stocks or cage, or by imprisonment, at the discretion of the court or justice before whom the prosecution shall be, according to the nature and degree of the offence, and circumstances aggravating.

In action of trespass before a justice of peace, if the defendant justify on plea of title, the cause to be removed, and bond given.

Sect. 4. And be it further enacted by the authority aforesaid, that when in action of trespass, brought before a justice of peace, the defendant shall justify and demur upon plea of title, a record shall be made thereof, and the matter of fact be taken pro confesso, and the party making such plea shall become bound with one or more sureties by way of recognizance unto the adverse party in a reasonable sum, not exceeding twenty pounds, on condition that he shall pursue his plea and bring forward a suit for a trial of his title, at the next inferiour court of common pleas to be holden for the county, in which such trespass is alleged to be done, and pay and satisfy all such damages and costs as by the said court shall be awarded against him, which recognizance the justice is hereby empowered to require and take, and shall be paid for the same by the reconusor two shillings, and one shilling for recording his plea, and at the charge also of the same party shall certify the process and record of such plea, together with the recognizance, unto the said inferiour court of common pleas; and if such reconusor shall neglect to bring forward such suit at the inferiour court, according to the tenor of his recognizance, the default shall be recorded, and a writ of scire facias be issued out of the clerk's office of the same court, in manner as by law is directed, for the recovery of the sum or penalty in the recognizance mentioned, of him, his surety or sureties, or if upon trial before the said court, he shall not make out a title to the land or tenement on which the trespass is laid to be done, paramount to the possession or other title of the adverse party, judgment shall be rendered for the party trespassed upon, for treble

damages and costs of suit: But if the defendant in trespass justifying on plea of title shall refuse or neglect to become bound in manner as aforesaid, then his plea shall abate, and the justice, notwithstanding the same, shall proceed to try the cause; and upon due proof of the trespass committed by him, shall award damages against him according to what shall be made out, and cost of suit.

Upon neglect or refusal to give bond, case to proceed.

SECT. 5. And be it further enacted, that if in the opening and pleading of any action of trespass there be disclosed and proved any breach of the peace, the party or parties guilty thereof shall be fined to the king, or otherwise punished as the law in such case provides.

Breach of the peace to be punished.

CHAPTER LIII.

AN ACT AGAINST RECEIVING OF STOLEN GOODS.

WHEREAS divers lewd and evil minded persons, for the sake of filthy lucre, do frequently receive from Indians, mulattoes, negroes, and other suspected persons, money and goods stolen, or obtained by other indirect and unlawful ways and means, thereby encouraging of theft,

For redress whereof,

Be it declared and enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that every person whosoever which shall presume, either openly or privately, to buy or receive of or from any Indian, mulatto, or negro servant or slave, or of any known, dissolute, lewd and disorderly person, of whom there is just cause of suspicion, any money, goods, wares, merchandizes, or provisions, and it appear the same money, goods, wares, merchandizes or provisions to have been stolen, gotten or obtained by any indirect or unlawful ways or means, every person so offending, and being thereof convicted, shall be sentenced to restore all such money, goods, wares, merchandizes or provisions, unto the party injured in specie (if not altered) and also forfeit to the said party the value thereof over and above, or double the value where the same are disposed of or made away. And if the person so offending be unable, or shall not make restitution as awarded, then to be openly whipt with so many stripes, not exceeding twenty, as the justices or court that may have cognizance of the offence shall order, or to make satisfaction by service. And the Indian, negro, mu-

Persons receiving or buying stolen goods &c. to make restitution

If unable to make restitution, to be corporally punished.

latto, or other suspicious person as aforesaid, of or from whom such money, goods, wares, merchandizes or provisions shall be received or bought, shall be punished by whipping, not exceeding twenty stripes, and be further prosecuted as the law directs in case of theft, unless where such money, goods or provisions shall be taken from the master of such person.

CHAPTER LIV.

AN ACT FOR THE INSPECTING AND SUPPRESSING OF DISORDERS IN LICENSED HOUSES, &c.

Innholders, &c. to be provided for entertainment of men and horses.

SECT. 1. BE it enacted and declared by the lieutenant governor, council and representatives, convened in general assembly, and by the authority of the same, that all innholders, taverners and common victuallers, shall at all times be furnished with suitable provisions and lodging for the refreshment and entertainment of strangers and travellers, pasturing, stable-room, hay, and provender for horses, on pain of being deprived of their license.

Penalty for entertaining of servants or negroes, &c.

And that no person who is or shall be licensed to be an innholder, taverner, common victualler, or retailer, shall suffer any apprentice, servant, or negro, to sit drinking in his or her house, or to have any manner of drink there, without special order or allowance of their respective masters, on pain of forfeiting the sum of ten shillings for every such offence. Neither shall any licensed person suffer any inhabitant of such town where he dwells, or coming thither from any other town, to sit drinking or tippling in his or her house, or any of the dependencies thereof, or to continue there above the space of one hour, other than travellers, persons upon business or extraordinary occasions, on the like penalty of ten shillings for every offence.

None to continue in publick houses above one hour, unless, &c.

And every person who, contrary to this act, shall continue in any such house tippling or drinking, or otherwise misordering him or her self, or above the space of one hour, other than as aforesaid, shall forfeit and pay the sum of three shillings and four pence, or be set in the stocks, not exceeding four hours time.

None to be suffered to be drunk there, or

And no person or persons licensed as aforesaid, shall suffer any person to drink to drunkenness, or excess, in his or her house, nor shall suffer any person as his or her guest to be and remain in such house or any of the dependencies thereof,

on the Lord's day, other than strangers, travellers, or such as come thither for necessary refreshment, on pain of forfeiting the sum of five shillings for every offence in that kind. to be there on the Lord's day, unless, &c.

SECT. 2. And be it further enacted by the authority aforesaid, that all fines and forfeitures arising for any of the offences before mentioned shall be one moiety thereof to the use of the poor of the town where the offence is committed, and the other moiety to him or them that shall inform and prosecute for the same, except where such offences are presented by a grand jury, in which case the whole forfeiture to be to the use of the town. And every justice of the peace, within his precincts, is hereby empowered to hear and determine concerning any of the offences aforesaid, and to restrain and commit the offender to prison, until he pay and satisfy the penalty or forfeiture, or otherwise by warrant cause the same to be levied by distress and sale of the offender's goods. Penalties, &c. how to be employed. Justice of the peace, his power.

SECT. 3. And be it further enacted by the authority aforesaid, that before any person shall receive license to be an innholder, common victualler, taverner, or retailer, every such person shall become bound by recognizance to his majesty, in the sum of ten pounds, the principal, and two sureties in five pounds a piece, before one or more of the justices of the general sessions of the peace, on condition following, that is to say: No innholder, &c. to receive license before entering into recognizance.

The condition of this recognizance is such, that whereas the above bounden A. B. is admitted and allowed by the justices of the court of general sessions of the peace to keep a common inn, alehouse or victualling house, and to use common selling of wine, beer, ale, cyder, and other strong liquors by retail for the space of one whole year next ensuing, and no longer, in the now dwelling house of the said A. B. in C. commonly known by the sign of —— and no other: if therefore the said A. B. during the time aforesaid shall not permit, suffer or have any playing at dice, cards, tables, quoits, loggets, bowls, shuffle-board, nine-pins, billiards, or any other unlawful game or games in his house, yard, garden, back side or any of the dependencies thereof, nor shall suffer to be or remain in his house any person or persons, not being of his ordinary household or family, on the Lord's day or any part thereof, contrary to law, nor shall sell any wine, liquors or other strong drink to any apprentices, servants, Indians or negroes, nor shall suffer any person or persons to be there tippling, drinking, or continue there after nine of the clock in the night time, or otherwise contrary to law, and in his said house shall and do use, maintain and uphold good order and rule, and do endeavour the due observance of the laws made for regulation of such houses, Recognizance for innholders, &c.

then this present recognizance to be void, but on default therof, to abide and remain in full force and virtue.

And before any person shall receive license to retail any wine or strong liquors, to be spent out of doors, and not otherwise, such person shall become bound by recognizance as aforesaid, on condition following, that is to say:

Recognizance for retailers out of doors.

The condition of this recognizance is such, that whereas the above bounden A. B. is licensed and allowed by the justices of the court of general sessions of the peace to retail for the space of one whole year next ensuing, and no longer, out of his now dwelling house in C. [Sort of strong liquors.] to be spent out of doors, and not otherwise; if therefore the said A. B. shall not entertain or suffer any person or persons to sit drinking or tippling in his house, cellar, back sides, or any of the dependencies of the said house, nor shall sell any other sort of drink than what he is licensed for as abovesaid, and shall and do in and by all things observe the directions of the law relating to persons licensed for retailing out of doors only, then this present recognizance to be void, but on default thereof to abide and remain in full force and virtue.

For each of which aforesaid recognizances the party, to whom such license shall be granted, shall pay two shillings, to be divided betwixt the justice and the clerk.

And for the better inspecting of licensed houses, and the discovery of such persons as shall presume to sell without license,

Tithingmen to be annually chosen.

Sect. 4. Be it enacted by the authority aforesaid, that the selectmen in each town respectively shall take due care, that tithingmen be annually chosen at the general meeting for choice of town officers, as is by law provided, and upon any vacancy to fill up the number at any other town meeting, which tithingmen shall have power, and whose duty it shall be carefully to inspect all licensed houses, and to inform of all disorders or misdemeanours which they shall discover or know to be committed in them, or any of them, to a justice of the peace, or sessions of the peace within the same county, as also of all such as shall sell by retail, without license, and other disorders or misdemeanours committed in any such house, and in like manner to present or inform of all idle and disorderly persons, profane swearers or cursers, sabbath breakers, and the like offenders, to the intent such offences and misdemeanours may be duly punished and discouraged; every of which tithingmen shall be sworn before a justice of the peace, or at the sessions of the peace, to the faithful discharge of his office in manner following, that is to say:

Tithingmen, their power and duty.

Oath.

You A. B. being chosen a tithingman within the town of C. for one year next ensuing, and until another be chosen and sworn in your stead, do swear, that you will faithfully

endeavour and intend the duty of your office. So help you God.

Which tithingmen shall have a black staff of two foot long, tipt at one end with brass about three inches, as a badge of their office, to be provided by the selectmen at the charge of the town. Staff.

SECT. 5. And be it further enacted by the authority aforesaid, that if any person, being duly chosen to the said office, shall refuse to take his oath, or serve therein, he shall forfeit and pay the sum of forty shillings, to the use of the poor of the town whereto he belongs, upon conviction of such refusal before the justice of the peace, or sessions of the peace where he is summoned to be sworn, certificate being produced under the hand of the town clerk, that such person was legally chosen to that office, and the said forfeiture to be levied by distress and sale of such person's goods, by warrant from a justice of the peace, or sessions of the peace respectively, and delivered to the town treasurer or overseers of the poor, for the use aforesaid; and for want of such goods whereon to make distress, the officer in the said warrant shall be required to seize the body of the offender, and him commit unto prison, to be there kept, until he shall answer and pay the said fine or forfeiture, with the charges of levying the same. Penalty for not serving.

And all tithingmen that shall inform and prosecute for the breach of any penal act shall have the benefit of such part of the forfeiture as does by law accrue unto the informer. And all persons prosecuted for breach of any act relating to retailing without license, the penalty whereof for one offence exceeds not forty shillings besides charges, may be convicted by two single evidences upon oath, though but one to one breach of such act, so as both the breeches be within one month, the person accused or complained of not plainly and positively denying the fact. Tithingmen allowed the benefit of informers.

SECT. 6. And be it further enacted by the authority aforesaid, that every person to whom any license shall be granted, before the receiving or exercising of the same, over and above the recognizance required for the due observation of the laws, and keeping of good rule and order as aforesaid, shall also become bound unto his majesty in a distinct recognizance with sufficient sureties, in manner as aforesaid, and in such sum as the justices in sessions shall appoint, on condition that the person so licensed shall duly and truly pay the duties of exeise for his draught, according to the rates by law established, or otherwise perform such agreement for the same as shall be made with the officer or officers, that shall from time to time be appointed to agree for and receive the said duties, for which recognizance he shall pay the like fee before mentioned. Licensed persons also to enter into recognizance for paying their exeise.

License to be granted at the next general sessions of the peace, after the 29th of June annually.

Sect. 7. And be it further enacted, that for the future the time of granting of licenses to innholders and retailers of drink shall be at the first general sessions of the peace that shall be held and kept in course within the several counties at or next after the nine and twentieth day of June annually, and that such as have already obtained licenses shall hold them, unless they forfeit the same by breach of law, until the general sessions of the peace to be held in the respective counties as aforesaid next after the nine and twentieth day of June, one thousand six hundred ninety-nine; any law or usage to the contrary notwithstanding.

No more persons to be licensed to keep publick houses, than what are necessary for refreshment of travellers.

And the better to prevent nurseries of vice and debauchery,

Sect. 8. It is further declared, that the justices of the general sessions of the peace in each county respectively be, and hereby are directed not to license more persons in any town or precinct to keep houses for common entertainment, or to retail ale, beer, cyder, wine or strong liquors within or out of doors, than the said justices shall judge necessary for the receiving and refreshment of travellers and strangers, and to serve the publick occasions of such town or precinct, having regard to the law for the qualification and approbation of the persons so to be licensed; and all publick houses shall be on or near the high streets, roads, and places of great resort.

Publick houses to be on high streets, &c.

Clerks of the several courts to put in suit recognizances.

Sect. 9. And be it further enacted by the authority aforesaid, that the clerk of the inferiour court of common pleas in each several county, and the clerk of the superiour court of judicature respectively, by direction of the court from time to time, shall by writ of scire facias prosecute to effect all such recognizances as shall be taken in court, or before any justice, whereof default is or shall be made in not performing the condition of the same, and upon execution awarded, to make out such execution unto the sheriff of the county or his deputy, who are accordingly to levy the sum therein expressed, and to account for the monies or estate levied for satisfaction thereof, unto the treasurer, as by law he is obliged; and no recognizance for the keeping of good rule and order in publick licensed houses, or for retailing out of doors, shall be put in suit for any breach thereof made after the expiration of two years from the time of taking such recognizance.

CHAPTER LV.

AN ACT FOR EXPLANATION AND ADDITION TO THE ACT FOR REGULATING OF FENCES, CATTLE, &c.

FORASMUCH as in and by an act of this province, entitled an act for regulating of fences, cattle, &c. made and passed in the fifth year of the reign of his present majesty, and his late royal consort queen Mary, of blessed memory, amongst other things therein contained, it is enacted, "That in every town and peculiar within this province there be annually chosen by the inhabitants thereof two or more meet persons to be viewers of fences," but no penalty provided by the said act, in case the persons so chosen refuse to accept thereof,

SECT. 1. Be it therefore enacted and declared by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that every meet person that shall hereafter be chosen a viewer of fences within any town or peculiar in this province, refusing to accept thereof, or to be sworn to the faithful discharge of that office, shall forfeit and pay to the use of the poor of such town or peculiar the sum of twenty shillings, and another shall be forthwith chosen in his room. And every person from time to time chosen and sworn to the said office, upon due notice given him, and being requested by any person or persons interested, to view any insufficient and defective fence in and about any general or common field, or in and about any particular field or inclosure, shall forthwith attend the same, on pain of forfeiting the sum of twenty shillings, one moiety thereof to the use of the poor of the town or peculiar, and the other moiety to him that shall inform and sue for the same. And each fence viewer shall be allowed three shillings a day, and proportionably for half a day, and under that six pence an hour for his time spent in viewing of any fence or fences, to be paid him by the party that sets him on work, who shall be reimbursed the same by the owner or owners of the defective fence. And when and so often as it shall happen any fence to be broken or fallen down, or to be otherwise defective, the owner or occupant of the land to which such fence belongs, upon notice thereof given him, shall forthwith repair the same; and in case he refuse or neglect so to do, the fence viewers shall cause the same to be sufficiently repaired, as the law directs. And all divisional fences betwixt man and man shall be kept up in good repair for the whole year, unless the proprietors of the lands shall otherwise agree.

Penalty for not serving as a fence viewer.

Penalty for not attending his duty.

Allowance.

Fence viewers to be empowered by a warrant to impress workmen, &c.

SECT. 2. And be it further enacted by the authority aforesaid, that for the better enabling of the fence viewers to discharge their duty, according to the true intent of the law, it shall and may be lawful to and for any fence viewer, by warrant from the next justice of the peace, or selectmen, (in such towns where no justice dwells) or the major part of them, who are hereby respectively empowered to make out such warrant, to impress workmen and teams for the speedy repairing and making up of fences that are defective or wanting, paying double the usual and accustomed rates for such teams and workmanship, and to the fence viewer for his time, to be adjusted and determined by the selectmen, and to be by him recovered against the owner or occupier of the land about which such fence is set down or repaired, in manner as the law directs.

Fence of common fields to be maintained by the proprietors in proportion.

SECT. 3. And be it further enacted by the authority aforesaid, that every party interested in any common or general field shall from time to time make and maintain his just and due part and proportion of the fence for inclosing the same according to his interest therein, in such manner as hath or shall be agreed on by the major part of the propriety, the whole being duly warned and met to order the same, and the orders so made shall be binding and obliging upon the proprietors absent; and a third part of the propriety in such common or general field, shall and may call and summon a meeting of the whole from time to time, as there shall be cause.

And no proprietor in any such field shall put or cause to be put any beast, cattle or sheep thereinto, over and above the number allowed him, or keep them longer there than the time set and limited by the major part of the propriety or interested, on penalty of answering double the damages that shall happen or accrue thereby, to be recovered in any court proper to try the same.

Partition fences to be maintained by the proprietors in equal halves.

SECT. 4. And it is further enacted, that all partition fences betwixt lands under improvement shall be made and maintained from time to time in equal halves by the owners or proprietors of such lands respectively. And in case any proprietor of land shall improve his land, the land adjoining not being under improvement, and so make the whole partition fence, when and so soon as the owner or proprietor of the adjoining land shall also improve his, he shall pay for the one half of such partition fence, according to the value thereof at that time, and keep up and maintain his half part thereof from thence forward. But if either of such proprietors adjoining do cease to make improvement of his land, he that continues so to do shall have liberty to purchase the other part of such partition fence, as it shall then be valued to be worth, by persons indifferently chosen by each party for that purpose. And in case any person improving as

aforesaid shall neglect or refuse to make and maintain one half of the partition fence betwixt his land and the land next adjoining, the owner or proprietor of such land adjoining shall be liable to a suit, and to have recovered of him in any court proper to try the same the full value of the one half of such partition fence, according to estimation thereof upon appraisement, by the other party who makes and maintains the whole fence, together with his damage sustained by such neglect or refusal as aforesaid; saving always to every person and persons any particular agreement or agreements touching the making and maintaining of such divisional fence between their lands.

Fines and penalties where to be recovered.

All fines, penalties, forfeitures or payments accruing by virtue of this act from time to time, to be had, sued for and recovered in any court proper to try the same.

Proviso for house-lots not exceeding ten acres.

Provided, this act shall not extend to house-lots not exceeding ten acres; but if the owner or owners of such lots shall improve, his neighbour shall be compellable to make and maintain one half of the fence between them, whether he improve or not.

Major part of the propriety in any general field, to lay down the same at pleasure.

Provided also, that it shall and may be lawful to and for the major part of the interests or propriety in any common or general field to dissolve and lay down the same at pleasure; all the proprietors being first duly warned, and there being six months time given before any such field is laid down.

[lay down the same at pleasure.

CHAPTER LVI.

AN ACT IN ADDITION TO, AND EXPLANATION OF THE ACT AGAINST ADULTERY AND POLYGAMY, MADE IN THE SIXTH YEAR OF THE REIGN OF KING WILLIAM AND QUEEN MARY.

WHEREAS in the act, entitled an act against adultery and polygamy, it is provided in these words, "provided always that this act or any thing therein contained shall not extend to any person or persons whose husband or wife shall be continually remaining beyond the seas by the space of seven years together, or whose husband or wife shall absent him or her self the one from the other by the space of seven years together, in any part within their majesties' dominions, or elsewhere, the one of them not knowing the other to be living within that time," which limitation of seven years is in some cases found to be excessive and inconvenient,

Therefore for the better preventing the violation of the seventh commandment, and for obtaining the blessings God is wont to bestow upon the keepers of the same,

Limitation of three years in case.

Be it enacted and declared by the lieutenant governor, council and representatives, convened in general assembly, and it is enacted and declared by the authority of the same, that if any married person, man or woman, has lately or shall hereafter go to sea in any ship or other vessel, bound from one port to another, where the passage is usually made in three months time, and such ship or other vessel has not been, or shall not be heard of within the space of three full years next after their putting to sea from such port, or shall only be heard of under such circumstances, as may rather confirm the opinion commonly received of the whole company's being utterly lost, in every such case, the matter being laid before the governor and council, and made to appear, the man or woman, whose relation is in this manner parted from him or her, may be esteemed single and unmarried; and upon such declaration thereof, and license obtained from that board, may lawfully marry again; any law, usage or custom to the contrary notwithstanding.

CHAPTER LVII.

AN ACT ENABLING SHERIFFS, CONSTABLES, &C. TO REQUIRE AID AND ASSISTANCE IN THE EXECUTION OF THEIR RESPECTIVE OFFICES, REFERRING TO CRIMINALS.

Forasmuch as it is oftentimes necessary, that sheriffs, under-sheriffs and constables be aided and assisted in the execution of their respective offices,

Sect. 1. Be it therefore enacted by the lieutenant governor, council and representatives, convened in general assembly, and by the authority of the same, that when and so often as any sheriff, under-sheriff or constable shall be in the execution of his office, for the preservation of the peace, or for the apprehending or securing any person or persons for violating the same, or for any other criminal matter or cause, it shall and may be lawful to and for such sheriff, under-sheriff or constable to require suitable aid and assistance therein. And if any person or persons being required by any sheriff, under-sheriff or constable in his majesty's name, to aid and assist him in the execution of his office as aforesaid, shall neglect or refuse so to do, and be thereof

Penalty for refusal or neglect to aid or assist the sheriff, &c.

convicted before one or more of his majesty's justices of the peace, such offender or offenders shall be fined, to the use of the poor of the town where the offence shall be committed, not exceeding forty shillings, at the discretion of such justice or justices, according to the circumstances aggravating or lessening such offence. And if such offender or offenders be unable or shall not forthwith pay the said fine, such justice or justices may punish him or them by imprisonment, not exceeding forty-eight hours, or by setting in the stocks, not exceeding four hours.

Penalty for pretending to be a sheriff, &c. and not so bona fide.

And if any person or persons not being really and bona fide a sheriff, under-sheriff, or constable, shall presume to abuse his majesty's name and authority in pretending him or themselves to be any or either of the said officers, and take upon him or themselves to act as such, or to require any other person or persons to aid or assist him or them in any matter or thing belonging to the duty of a sheriff, under-sheriff or constable, every person or persons so offending, and being thereof convicted, shall forfeit and pay a fine not exceeding one hundred pounds, according to the nature and circumstances aggravating his offence, at the discretion of the court before whom the conviction shall be, one moiety of the said fine or forfeiture to be unto his majesty, towards the support of the government within this his majesty's province, and the other moiety to him or them that shall inform and prosecute for the same.

Justices may command any person to apprehend an offender.

Sect. 2. And be it further enacted by the authority aforesaid, that any of his majesty's justices of the peace, for the preservation of the same, or upon view of the breach thereof, or of any other transgression of law proper to his cognizance done or committed by any person or persons whatsoever, shall, and hereby is empowered, in the absence of a sheriff, under-sheriff or constable, to require any person or persons to apprehend and bring before him such offender or offenders. And every person or persons that shall neglect or refuse to obey any justice or justices in apprehending such offender or offenders, being thereunto required as aforesaid, shall incur and suffer the like pains and penalties as is before provided for refusing or neglecting to assist any sheriff, under-sheriff or constable in the execution of his office, as before mentioned.

Penalty for neglect or refusal.

And no person or persons so offending, unto whom such justice is known, or shall declare himself so to be, shall be admitted to plead excuse on pretence of ignorance of his office.

CHAPTER LVIII.

AN ACT FOR HEARING AND DETERMINING OF CASES IN EQUITY.

WHEREAS the respective courts of justice within this province are by law empowered, where the forfeiture of any penal bond shall be found, in the entering up of judgment in such case, to chancer the same unto the just debt and damages, the practice whereof is found to give great ease and satisfaction unto his majesty's subjects, whereby oppression, delay, and great costs and charges are prevented, which otherwise would unavoidably arise, and applications having been unto this court, that further provision may be made for relief in equity, in cases not relievable by the rules of the common law,

To the intent therefore that justice and equity may be jointly administered,

Courts of justice empowered to chancer penalties annexed to specialties and forfeiture of estates granted on condition.

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that in all cases brought or to be brought for trial in the superiour court of judicature, or in the inferiour court of common pleas within the several counties where the forfeiture or penalty annexed unto any articles, agreement, covenant, contract, charter party, or other specialties, or forfeiture of estates on condition, executed by deed of mortgage, or bargain and sale with defeasance, shall be found by verdict of jury, or confession of the obligor, mortgagor or vendor, the justices of the said courts respectively, where the trial is had, are hereby empowered and authorized to moderate the rigour of the law, and on consideration of such cases according to equity and good conscience, to chancer the forfeiture, and enter up judgment for the just debt and damages, and to award execution accordingly; only in real actions upon mortgage, or bargain and sale with defeasance, the judgment to be conditional, that the mortgagor or vendor, or his heirs, executors or administrators do pay unto the plaintiff such sum as the court shall determine to be justly due thereupon, within two months time after judgment entered up for discharging of such mortgage or sale, or that the plaintiff recover possession of the estate sued for, and execution to be awarded for the same.

SECT. 2. And be it further enacted by the authority aforesaid, that in all cases of like nature heretofore heard and tried in any of the courts of justice within this province, since the month of April in the year of our Lord God one

thousand six hundred eighty-six, where the whole forfeiture or penalty of any bond or obligation, conditioned for the payment of money, performance of articles, covenants, agreements, charter parties or other specialties has been recovered and exacted, or where any estate granted on condition by mortgage, or bargain and sale with defeasance hath been recovered, and the mortgagee or vendee by himself or assigns hath entered into, or by any ways or means whatsoever obtained possession thereof for default of the mortgagor or vendors paying the money, or otherwise performing what according to such condition or defeasance he ought to have done, the party aggrieved and oppressed by such exaction, or to whom the right or equity of redemption of any such estate does belong, may bring his suit for remedy and relief therein, by filing a bill, plaint or declaration, either in the superiour court of judicature, or the inferiour court of common pleas at his pleasure, and shall cause the adverse party to be served with a writ or process out of such court, fifteen days before the day of the sitting of the same, briefly notifying the import of the said bill, plaint or declaration, and requiring him to appear at the said court, to make his answer and defence; and in case of the defendant's non-appearance, or on motion made to the court, and reasonable cause therefor shewn, the court may continue such suit unto the next court, and no longer.

Provision for cases of like nature heard and tried since April, 1686.

Provided, no such suit shall be brought after the tenth day of December, which will be in the year of our Lord one thousand seven hundred and one.

SECT. 3. And the justices in the before mentioned courts respectively are hereby empowered and authorized to receive and hear every such case and cases that shall be orderly brought before them, as aforesaid, and on consideration of the several pleas and allegations made by either party, to decree and enter up judgment therein agreeable to equity and good conscience, and to award execution accordingly; and where any mortgagee or vendee of any houses or lands granted on condition hath recovered or entered into, and taken possession of the same for the condition broken, the mortgagor or vendor, or his heirs tendering payment of the original debt and damages, or such part thereof as was remaining unpaid, at the time of entry, with reasonable costs and allowance for any disbursements afterwards laid out on such housing or lands for the advancement and bettering of the same, over and above what the rents, profits or improvements thereof made, shall amount unto, upon a just computation thereof by the court, as on hearing of the parties shall be made to appear, the mortgagee or vendee, or his heirs, or the present tenant in possession (being the purchaser and holding in his own right) shall be obliged to accept such payment, and to restore and deliver possession

The justices of the several courts empowered to receive and hear such cases, and to grant relief in equity.

of the estate unto the mortgagor or vendor, or his heirs, and seal, execute and acknowledge a good and sufficient deed in the law of release and quitclaim to the same; but in case of his not appearing in court, or refusal to accept such payment tendered, the whole of the said monies which the court shall enter judgment for being left in custody of the court, on behalf and for the use of the mortgagee or vendee, his heirs or assigns, judgment shall be entered up for the mortgagor or vendor, or his heirs, to recover possession of such houses or lands, and execution be accordingly awarded.

Suit for redemption where the mortgage is in possession, to be brought in three years.

SECT. 4. And further it is enacted, that at any time hereafter, where the mortgagee or vendee shall be in actual possession of any estate granted on condition, it shall be in the liberty of the mortgagor or vendor, or his heirs, to bring his suit in manner as aforesaid, for redemption thereof, within the space of three years next after the term therein expired, and not afterward.

Provided always, that the party aggrieved at any judgment to be given as aforesaid shall have the same liberty of appeal and review as in other cases is provided at the common law.

CHAPTER LIX.

AN ACT FOR HOLDING OF COURTS OF GENERAL SESSIONS OF THE PEACE, AND ASCERTAINING THE TIMES AND PLACES FOR THE SAME.

General sessions of the peace, their constitution and power.

SECT. 1. BE it enacted and ordained by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that there shall be held and kept in each respective county within this province yearly, and in every year at the times and places in this act hereafter mentioned and expressed, a court of general sessions of the peace, by the justices of the peace of the same county, or so many of them as are or shall be limited in the commission of the peace, who are hereby empowered to hear and determine all matters relating to the conservation of the peace and punishment of offenders, and whatsoever is by them cognizable according to law, and to give judgment and award execution therein.

SECT. 2. And be it further enacted by the authority aforesaid, that it shall and may be lawful for any person aggrieved at the sentence of the justices in any court of general

sessions of the peace, to make his appeal from such sentence, (the matter being originally heard and tried in the said court) unto the next court of assize and general gaol delivery to be held within or for the same county, there to be finally issued.

Appeal to the court of assize.

Provided, that no appeal shall be granted, unless it be claimed at the time of declaring the sentence, and the appellant enter into recognizance, with two sufficient sureties within the space of two hours next after, in a reasonable sum, for his personal appearance at the court appealed to, and prosecution of his appeal there with effect, and to abide and perform the order or sentence of the said court thereon, and to be of the good behaviour in the mean time; and the party appealing is to remain in custody of an officer, until he shall have given such security, and the officer not to be allowed above twelve pence an hour for his time and attendance.

Appellant to give security for prosecution, &c.

See resolve at the end of this act.

Provided also, that every such appellant do file the reasons of his appeal in the clerk's office of the court appealed unto seven days before the day of the sitting of the said court, and also at his own cost do take out and present unto the court an attested copy of the sentence, and likewise attested copies of all the evidences upon which the same was grounded; and the appellant shall pay the like fee for the entering of his appeal in the court appealed to, as is by law required, for entry of an action in a civil cause, and the like fee to the jurors that shall try the same.

Reasons of appeal to be filed seven days before the sitting of the court appealed to.

Sect. 3. And be it further enacted by the authority aforesaid, that in convenient time before the sitting of the said court of general sessions of the peace in each respective county, the clerk of the peace in such county shall issue out warrants, directed to the constables of the several towns within the same county, or the most principal of them, requiring them to assemble the freeholders and other inhabitants of their town, qualified as in and by his majesty's royal charter is directed, to elect and choose so many good and lawful men of the said town or districts thereof alike qualified as aforesaid, as the warrant shall direct, to serve as jurors at such court; and the constable shall summon the persons so chosen to attend accordingly at the time and place appointed, and make timely return of his warrant unto the clerk that granted the same, on pain that every constable failing of his duty therein shall forfeit and pay unto the county treasurer, for the use of the county, a fine not exceeding five pounds, nor less than forty shillings, at the discretion of the justices of such court, unless such constable, so failing of his duty as aforesaid, shall seasonably make a reasonable excuse unto the justices of the said court for his default, and the same be allowed of by them.

Jurors how to be chosen and summoned.

Penalty on constables neglecting to make their return.

Sheriff to return jurors, in case there fail of a sufficient number.

And if by reason of challenge, or otherwise, there do not appear a sufficient number of good and lawful men to make up the petit jury or juries to serve at the said court, then and in such case the said jury or juries shall be filled up de talibus circumstantibus, to be returned by the sheriff, and where the sheriff is concerned or related to either of the parties in any case, to be returned by the coroner.

Appeal from the sentence of one or more justices of the peace.

Sect. 4. And be it further enacted by the authority aforesaid, that it shall and may be lawful for any person, sentenced for any criminal offence, by one or more justices of the peace out of sessions, to appeal from such sentence unto the next court of general sessions of the peace to be held within the same county, every such appellant recognizing with sureties in a reasonable sum, not exceeding five pounds, for his appearance at the court appealed to, and to prosecute his appeal there with effect, and to abide and perform the order or sentence of the said court thereon, which is to be final, and in the mean time to be of the good behaviour; and every such appellant shall attend the same rules and method for bringing forward his appeal at the said court of general sessions of the peace, as before in this act is provided in case of appeal from the said court to the court of assize and general gaol delivery: and shall pay the like fee for entering of his appeal as for the entering of a civil action in the inferiour court of common pleas, and the like fee to the jurors as is paid them in the said inferiour court.

Sect. 5. At a great and general court begun and held at Boston the twenty-sixth of May, 1708, the following resolve passed, viz. A question being moved upon the third section or paragraph in the act for holding of courts of general sessions of the peace, &c. made and passed in the eleventh year of king William the third, viz.

Whether the bond for the good behaviour directed by the said act to be given in case of appeal from the sentence of the justices, in any court of general sessions of the peace, be demandable of any other, save of the person prosecuted, convicted and sentenced for any crime, and his sureties?

Resolved in the negative, and that the law is so to be understood and practised accordingly, any usage or custom to the contrary notwithstanding.

CHAPTER LX.

AN ACT FOR THE ESTABLISHING OF INFERIOUR COURTS OF COMMON PLEAS IN THE SEVERAL COUNTIES OF THIS PROVINCE.

Inferiour court's constitution and power.

SECT. 1. BE it enacted and ordained by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that there shall be held and kept in each respective county within this province, and at the island of Nantucket within the same, yearly and every year, at the times and places in this act hereafter mentioned and expressed, an inferiour court of common pleas, by four substantial persons, to be appointed and commissionated as justices of the same court in each county, any three of whom to be a quorum for the holding of the said court, who shall have cognizance of all civil actions arising or happening within such county, triable at the common law, of what nature, kind or quality soever, and are hereby empowered to give judgment therein, and award execution thereupon.

Writs to issue out of the clerk's office.

SECT. 2. And be it further enacted by the authority aforesaid, that all processes and writs for the bringing any cause or suit to trial in any of the said inferiour courts shall issue out of the clerk's office of such court in his majesty's name, under the seal of the said court, to be signed by the clerk, and directed to the sheriff or marshal of the county, his under-sheriff or deputy, and if such process or writ be against the sheriff or marshal, to be directed to the coroner of such county, who is hereby empowered to execute the same, and where the sum sued for is under ten pounds, may be also directed to the constables of the town; and writs as well original as judicial issuing out of the clerk's office of the said court shall run into any county and place within this province, and be there executed by the officer or officers of such county to whom they are directed; and all proper original processes in the said court shall be summons, capias or attachment, which shall be served and executed fourteen days before the day of the sitting of the court where such writ or process is returnable.

To run through the province. And to be summons capias or attachment.

Proviso for actions under 40s.

Provided, that no action under the value of forty shillings shall be brought into any of the said inferiour courts, unless where freehold is concerned, or upon appeal from a justice of peace.

SECT. 3. And be it further enacted by the authority aforesaid, that in convenient time before the sitting of the

Clerks to issue out warrants.

said inferiour court in each respective county, the clerk of such court shall issue out warrants directed to the constables of the several towns within the same county, or the most principal of them, requiring them to assemble the freeholders and other inhabitants of their town qualified as in and by his majesty's royal charter is directed, to elect and choose so many good and lawful men of the said town or districts thereof alike qualified as aforesaid, as the warrant shall direct, to serve as jurors at such court; and the constable shall summon the person so chosen to attend accordingly at the time and place appointed, and make timely return of his warrant unto the clerk that granted the same, on pain that every constable failing of his duty therein shall forfeit and pay unto the county treasurer for the use of the county a fine not exceeding five pounds, nor less than forty shillings, at the discretion of the justices of such court; unless such constable so failing of his duty as aforesaid shall seasonably make a reasonable excuse unto the justices of the said court for his default, and the same be allowed of by them.

And if by reason of challenge or otherwise there do not appear a sufficient number of good and lawful men to make up the petty jury or juries to serve at the said court, then and in such case the said jury or juries shall be filled up de talibus circumstantibus, to be returned by the sheriff, and where the sheriff is concerned, or related to either of the parties in any case, to be returned by the coroner.

CHAPTER LXI.

AN ACT FOR ESTABLISHING A SUPERIOUR COURT OF JUDICATURE, COURT OF ASSIZE AND GENERAL GAOL DELIVERY WITHIN THIS PROVINCE.

Superiour court of judicature, court of assize, &c. their constitution and power.

SECT. 1. BE it enacted and ordained by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that there shall be a superiour court of judicature, court of assize and general gaol delivery over this whole province, to be held and kept annually, at the respective times and places in this act hereafter mentioned and expressed, by one chief justice, and four other justices to be appointed and commissionated for the same, any three of whom to be a quorum, who shall have cognizance of all pleas, real, personal or mixt, as well all

pleas of the crown, and all matters relating to the conservation of the peace, and punishment of offenders, as civil causes or actions between party and party, and between his majesty and any of his subjects, whether the same do concern the realty and relate to any right of freehold and inheritance, or whether the same do concern the personalty and relate to matter of debt, contract, damage or personal injury, and also all mixt actions which concern both realty and personalty brought before them by appeal, review, writ of error, or otherwise as the law directs, and generally of all other matters as fully and amply to all intents and purposes whatsoever, as the courts of king's bench, common pleas and exchequer within his majesty's kingdom of England, have or ought to have, and are hereby empowered to give judgment therein and award execution thereupon.

Times and places for holding superiour courts.

SECT. 2. And be it further enacted by the authority aforesaid, that the times and places for the holding and keeping of the said superiour court of judicature, court of assize and general delivery, shall be as followeth; that is to say, within and for the county of Suffolk, at Boston, upon the first Tuesdays in November and May; within and for the county of Essex, at Salem, on the second Tuesday in November, and at Ipswich, on the third Tuesday in May; within and for the county of Middlesex, at Cambridge, on the last Tuesday in July, and at Charlestown, on the last Tuesday in January: within and for the county of Hampshire, at Springfield, on the second Thursday in August; within and for the county of York, at Kittery, on the Thursday in the week next before the time herein set and appointed for the sitting of the said superiour court at Ipswich; for the counties of Plymouth, Barnstable and Dukes county, at Plymouth, on the last Tuesday in March; and within and for the county of Bristol, at Bristol, on the second Tuesday in September yearly, and in every year, from time to time.

Nantucket.

SECT. 3. And be it further enacted by the authority aforesaid, that there shall be held and kept a superiour court of judicature, court of assize and general gaol delivery, for the hearing and determining of any capital offence or offences that shall arise or happen within the Island of Nantucket, at such place within the same, and at such time as the governor and council advising with the justices of the said court shall from time to time direct and appoint, according as occasion may be.

Provided nevertheless, that the trial of all matters and causes by appeal from the court of general sessions of the peace, or inferiour court of common pleas respectively within the said Island of Nantucket, or by writ of error relating to any judgment given in the said inferiour court, shall be in the superiour court of judicature, court of assize and general

gaol delivery, to be held within the counties of Suffolk or Middlesex.

Process to be served fourteen days before the court's sitting.

SECT. 4. And be it further enacted by the authority aforesaid, that all processes and writs issuing out of the said superiour court of judicature, to be held within or for any county within this province, shall be in his majesty's name, under the seal of the said court, and signed by the clerk thereof, and shall be directed to the sheriff, his under sheriff or deputy, or other proper officers, who are hereby empowered and required to observe and execute the same, and shall run into any county or place within this province, and be there executed by the officer or officers of such county or place to whom they are directed. And all processes for the trial of civil causes in the said court upon review, or in other cases, which by law may be originally there brought, shall be served and executed fourteen days before the day of the sitting of the court where such writ or process is returnable.

Jurors how to be chosen.

SECT. 5. And be it further enacted by the authority aforesaid, that in convenient time before the sitting of the said superiour court of judicature, court of assize and general gaol delivery, in each respective county, the clerk of the said court shall issue out warrants directed to the constables of the several towns, within the county or jurisdiction of the said court, or the most principal of them, requiring such constables to assemble the freeholders and other inhabitants of their town, qualified as in and by his majesty's royal charter is directed, to elect and choose so many good and lawful men of the said town or districts thereof, alike qualified as aforesaid, as the warrant shall

Penalty on constables not returning their warrants for choice of jurors.

direct, to serve as jurors at the said court; and the constable shall summon the persons so chosen to attend accordingly at the time and place appointed, and make timely return of his warrant unto the clerk that granted the same, on pain that every constable failing of his duty therein shall forfeit and pay unto the county treasurer for the use of the county a fine not exceeding five pounds, nor less than forty shillings, at the discretion of the justices of the said court; unless such constable so failing of his duty as aforesaid shall seasonably make a reasonable excuse unto the justices of the said court for his default, and the same be allowed of by them.

Sheriff to return jurors, in case there do not appear a sufficient number.

And if by reason of challenge, or otherwise there do not appear a sufficient number of good and lawful men to make up the petty jury or juries to serve at the said court, then and in such case the said jury or juries shall be filled up de talibus circumstantibus, to be returned by the sheriff, and where the sheriff is concerned or related to either of the parties in any case, to be returned by the coroner.

CHAPTER LXII.

AN ACT IN ADDITION TO THE ACT FOR REGULATING THE MILITIA.

WHEREAS in and by the act, entitled an act for regulating the militia, among other things therein contained, it is enacted, "that drums, drummers, trumpets, trumpeters, colours and banners, be by the commission officers of each troop or company, provided at the charge of the respective companies and troops, where they are not already provided, and the fines will not reach to procure the same," but no direction being given by the said law, how or in what manner such charge shall be raised and levied upon such company or troop,

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as the fines arising in any military company or troop shall not be sufficient to answer the charge of providing suitable drums, trumpets, colours and banners, and the support of drummers or trumpeters, the commission officers of such company or troop respectively are hereby authorized and empowered to assess so much as shall be wanting and necessary for that use and occasion upon their company or troop, and to proportion the same, in the most equal manner they may, upon all the persons entered in the roll of such company or troop, and liable to attend any military duty in the same, having due regard unto persons' ability for estate, and other circumstances, and where there be sons and servants, their parents or masters to pay for them, if they cannot do it themselves. And the assessments so made, being signed by the commission officers, shall be committed unto the clerk of such company or troop, together with a warrant from the chief officer of the same, requiring the said clerk to collect and pay in the same unto himself, to be employed and disposed to the use aforesaid, and to make distress of all persons that shall neglect or refuse to pay their proportion thereof. And such clerk is hereby empowered and required to execute such warrant accordingly, and to pay in the said monies unto his chief officer. And if any fail in their betrustment and duty aforesaid, they shall be liable to give account to their superiour officers, from time to time.

Commission officers to make assessment for drums, trumpets, &c.

CHAPTER LXIII.

AN ACT FOR THE SUPPRESSING AND PUNISHING OF ROGUES, VAGABONDS, COMMON BEGGARS, AND OTHER LEWD, IDLE AND DISORDERLY PERSONS, AND ALSO FOR SETTING THE POOR TO WORK.

House of correction to be provided in each county.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that there shall be erected, built or otherwise provided in every county within this province, at the charge of such county, a fit and convenient house or houses of correction, where such a house is not already provided, with convenient accommodations thereunto adjoining and belonging, to be used and employed for the keeping, correcting, and setting to work of rogues, vagabonds, common beggars, and other lewd, idle and disorderly persons; and until such house or houses of correction be erected, built, or otherwise provided, the common prison in each county may be made use of for that purpose.

Justices in their sessions to appoint a master of the house of correction.

SECT. 2. And be it further enacted by the authority aforesaid, that the justices of peace in every county, at the general sessions of the peace, to be holden for the same county, from time to time, may nominate and appoint at their will and pleasure an honest fit person to be the master of such house of correction; and it shall and may be lawful to and for the said court, or any one justice of the peace out of court, to send and commit unto the said house, to be kept and governed according to the rules and orders thereof, all rogues, vagabonds, and idle persons going about in any town or county begging, or persons using any subtle craft, juggling, or unlawful games or plays, or feigning themselves to have knowledge in physiognomy, palmestry, or pretending that they can tell destinies or fortunes, or discover where lost or stolen goods may be found, common pipers, fiddlers, runaways, stubborn servants or children, common drunkards, common night walkers, pilferers, wanton and lascivious persons either in speech or behaviour, common railers or brawlers, such as neglect their callings, mispend what they earn, and do not provide for themselves or the support of their families, upon due conviction of any of the offences or disorders aforesaid.

SECT. 3. And be it further enacted by the authority aforesaid, that the master of such house of correction to be

appointed as aforesaid shall have power and authority, and shall set all such rogues, vagabonds, beggars, and other lewd, idle and disorderly persons, as aforesaid, that shall be duly sent or committed unto his custody, to work and labour (if they be able) for such time as they shall continue and remain in the said house, and to punish them by putting fetters or shackles upon them, and by moderate whipping, not exceeding ten stripes at once, which (unless the warrant of commitment shall otherwise direct) shall be inflicted at their first coming in, and from time to time, in case they be stubborn, disorderly or idle, and do not perform their tasks, and that in good condition, according as they shall be reasonably stinted, or to abridge them of their food, as the cause shall require, until they be reduced to better order.

Rogues, vagabonds, &c. to be set to work.

And punished by whipping, &c.

And for the better support and governing of the said house of correction, and for employing of such persons as shall be committed to the same,

SECT. 4. Be it further enacted by the authority aforesaid, that the justices of each county in their court of general sessions of the peace, shall be, and hereby are authorized and empowered to make necessary rules and orders from time to time, as they shall find occasion, for the ruling, governing and punishing of such persons so to be committed, agreeable to the laws of this province; and such rules and orders as shall be made in that behalf by the justices in their general sessions, shall be of force, and be duly performed and put in execution.

Justices in their sessions to make orders for governing the house of correction.

SECT. 5. And be it further enacted by the authority aforesaid, that when any person or persons shall be committed to the said house of correction, from any town or towns in this province, the selectmen of such town, to which the said person or persons belong, shall take care, and at the cost and charge of the said town shall provide, as there shall be occasion, suitable materials, such as shall be necessary and convenient for the keeping such person or persons so committed, to work during his or their abode there, and shall deliver the same to the master or keeper of the said house, to be improved for that end. And where any stubborn children or servants that are under the immediate care and government of their parents and masters shall be committed to the said house, the parents or masters of such children or servants (if able) shall take care to provide such things as may be necessary for the keeping of them to work and labour, during their abode in the said house; and no person to be committed to the said house of correction, that is able to work, shall in any sort be chargeable to the county, for any allowance, either at their bringing in, going forth, or during the time of their abode there, but shall only be allowed for their labour and work the sum of eight pence out of every shilling they shall earn, and the overplus of

How persons sent to the house of correction are to be supported.

such their earnings to be unto the master or keeper of the said house to account for; and if such persons are masters or heads of families, then and in such case the whole profit and benefit of their labour, or so much thereof as the court of general sessions of the peace shall think necessary and direct, shall be for the relief and support of such persons and their families. And if any person or persons to be committed to the said house shall be unable to work, or be weak or sick, then to be relieved by the master or keeper of such house, who shall be again reimbursed what he shall so necessarily expend for the relief of such person or persons by the selectmen of such town to which the said person doth belong, and the selectmen to assess the same upon the inhabitants of such town or precinct, except the person or persons so committed to the said house, being unable to work or being weak or sick, were at the time of his, her, or their commitment in their minority, and under the care of their parents or masters, then and in every such case, the parents or masters of such person or persons shall reimburse what necessary charges the master or keeper of the said house of correction shall necessarily expend for their relief.

Master of the house of correction to be paid for his care, &c.

SECT. 6. And be it further enacted by the authority aforesaid, that the master or keeper of the said house of correction shall for his care, labour and service, in looking after the person or persons that from time to time shall be committed to his care and custody, and also for relieving any person or persons that shall happen to be weak or sick in his custody, have such reasonable allowance and satisfaction made him, by the parents or masters of such person or persons so committed, if under their immediate care and government, or otherwise by the town to which said person o persons do belong, as the justices at the court of general sessions of the peace for such county shall direct and appoint, if the earnings of such person or persons be not sufficient to discharge the same, over and above what is allowed them out of their earnings for their relief.

And to keep an account of the earnings of those committed to his custody.

And the master or keeper of every such house shall keep an exact account of all profits and earnings that shall be made by the labour of those under his custody from time to time, and present the same (upon oath if required) unto the justices of the same county, at their general sessions of the peace, out of which earnings the said master or keeper of the said house shall have his allowance; and if any overplus be, it shall be to the town to which the said person or persons doth belong, or to their parents or masters, according as the circumstance of the case may be. And the master or keeper of any such house of correction that shall refuse to account as aforesaid, or shall otherwise be negligent of his duty, required by this act, shall be liable to such fine or

punishment as by the discretion of the court of general sessions of the peace in such county shall be awarded.

And for the better employing and setting the poor to work:

Selectmen to proportion any assessment, that may be granted by the inhabitants of any town, for a stock to set their poor on work.

SECT. 7. Be it further enacted by the authority aforesaid, that where there is a house already built in any town, with intent to be improved for a work-house, to set their poor on work, or shall hereafter be built for that purpose, and the inhabitants of such town shall grant a tax or assessment, for the raising of a stock wherewith to provide necessary and suitable materials, tools and implements, for employing and setting their poor on work at such house, the selectmen of the same town for the time being shall proportion such tax or assessment upon the inhabitants thereof, in the most just and equal manner they may, according to the rules and methods for the time being prescribed by law for proportioning the province tax, and shall grant warrants for collecting the same, in like manner as the law directs for the gathering of other town rates or assessments; and the justices of peace residing in any such town, together with the selectmen thereof, are hereby empowered and authorized to nominate and appoint, from time to time, three or more sufficient persons of their inhabitants, as a master and wardens, to govern, inspect and take care that all persons of the same town employed at the said work-house, or sent thither by any two justices of the peace, quorum unus, to be kept to work there, be held and kept strictly to work, and that all idle and disorderly persons, and such as do not duly perform such reasonable task or stint as shall be set them, be punished by moderate whipping or setting in the stocks; and all stock, materials, tools and implements, to be raised and provided as aforesaid, shall be committed into the hands of such master and wardens to be managed, used and employed, according to their discretion, for the employing and setting to work all such persons as shall be under their inspection and government; and the said master and wardens are also hereby empowered to demand, sue for, recover, accept, receive and take any gifts, bequests and donations, that are, or shall be made and given by any person or persons, to the use of the poor, for and towards a stock for such work-house, and to employ and dispose the same accordingly, and shall once a year, or oftener, from time to time, if required, render an account upon oath unto the town of their management, employment and disposal, of all monies or other stock to be committed unto them, or that by any other ways or means, as aforesaid, shall come to their hands, and of the profits and incomes made thereof, and shall have such reasonable allowance and recompense made unto them for their trouble, pains and service, in and about this affair, as the town shall agree and order. And all stock to be raised,

Master and wardens to be appointed for such work-house.

Their power.

All stock to be kept entire for the said works.

or otherwise obtained as aforesaid, with the increase, profits and improvements, from time to time made thereof, shall be kept entire, and applied to, and for the ends and uses beforementioned, and for answering of the necessary charges arising on and about the repairing and keeping of the said house, and the subsisting of those that shall be there employed, and to no other use whatsoever.

Two justices may commit to the work-house.

SECT. 8. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any two justices of the peace (quorum unus) to send unto such work-house, to be there employed and kept to work, all persons belonging to the same town, being able of body, that live idly or disorderly, mispend their time, or that go about begging, or receive alms from the town. And the master of such house shall receive and keep them to work accordingly.

CHAPTER LXIV.

AN ACT APPOINTING THE SHERIFF TO HAVE THE KEEPING OF THE COMMON GAOL, AND THE PRISONERS THEREIN.

Sheriff to have the custody of the gaol and prisoners therein.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the sheriff of each several county within this province have the custody, rule, keeping and charge of every of the king's common gaols, prisons and prisoners in the same, in the county where he is sheriff, during the time of his office, to be held and kept by himself or his lawful deputy or under-keeper, for whom the sheriff shall be answerable; and every sheriff shall give sufficient security at the discretion of the court of general

To give security.

sessions of the peace in the same county, unto the king's majesty, for the due and faithful discharge and performance of his office in all the parts thereof.

And for encouragement unto the sheriff to take and use all possible care and diligence for the safe keeping of the prisoners that shall be committed to his custody,

Salary.

SECT. 2. Be it further enacted by the authority aforesaid, that the sheriff of every county shall have such salary allowed him for the same, as the justices of the court of general sessions of the peace within the same county shall think fit and order, not exceeding thirty pounds per annum for

the county of Suffolk, and not exceeding ten pounds a piece in each of the other counties within the province, to be paid out of the treasury of such county.

CHAPTER LXV.

AN ACT FOR KEEPING OF WATCHES IN TOWNS.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from time to time, when and so often as a military watch shall not be ordered and appointed to be kept, the justices of peace, together with the selectmen of each town within this province, and in such towns where no justice of the peace dwells, the selectmen by themselves are hereby empowered and authorized to direct and order a suitable watch or watches to be set up and kept nightly within such town, from and after nine o'clock in the evening, until sun rising in the morning, and the place or places where to set the same, and also a ward to be kept every Lord's day and other day, as they shall think to be needful, and to appoint the numbers whereof such watch and ward shall consist, and the time for the beginning and continuance of the same, and the constable or constables of the town, having orders accordingly given him or them in writing by the justices and selectmen, or the selectmen only, in such towns where no justice of peace dwells, are hereby empowered and required from time to time to warn such watch and ward respectively, and to see that all persons so warned by them do attend and observe their duty in that regard, and to take care in the warning thereof that such watch or ward do not consist of all or the greater part youths, but that some able householders or other sufficient persons be joined with them; and the constables are hereby enjoined to give in charge to the watch to see that all disturbances and disorders in the night be prevented or suppressed, and to examine all persons whom they shall see walking abroad in the night after ten o'clock, of their business abroad at such season, and whither they are going, unless they be known, orderly and peaceful persons, and in case they give not reasonable satisfaction therein, or are persons of ill behaviour, or justly suspected to have any unlawful intention or design, then to secure by imprisonment or otherwise all such disorderly and suspicious persons, to be safely kept until the morning, and then to

Justices and selectmen to appoint a watch to be kept in towns.

To be warned by the constable.

carry them before one of the next justices of the peace, to be examined and proceeded against according to the nature of their offence as is by law directed; and such watchmen shall walk the rounds in and about the principal inhabited parts within such town, to prevent any danger by fire, and to see that good orders be kept, taking particular observation and inspection of all houses and families of evil fame, and shall strictly observe the charge to be given them as aforesaid.

Houses of ill fame to be observed.

Persons liable to watch.

Sect. 2. And be it further enacted by the authority aforesaid, that all male persons in each town respectively of the age of sixteen years or upwards, being able of body, or having estate sufficient to hire, shall be liable to watch and ward, either in their own persons or by some other sufficient person or persons in their room, when duly warned to attend the same, except the members of the council, justices of the peace, members of the assembly for the time being, the president, fellows and students at the college, ministers, grammar schoolmasters, the sheriff of each county, the chief commission officer of each military company and troop for the time being, the officers of the governor's troop of guards, and persons living two miles from the place where the guard is kept.

Exception.

Penalty for not giving their attendance when warned.

Sect. 3. And be it further enacted by the authority aforesaid, that if any persons liable to watch or ward as aforesaid, being duly warned by the constable or other person by his appointment, shall refuse or neglect to appear, and attend their duty in that regard, either by themselves or some other sufficient persons in their stead, and be thereof convicted before a justice of the peace, either by the oath of such constable, or other sufficient testimony upon oath, without a just and reasonable excuse to be made and given for the same, every person so offending shall forfeit and pay to the use of the poor in such town the sum of five shillings, and have the said sum with the charges of prosecution levied by distress and sale of his or her goods or chattels, or otherwise be committed to prison until the same be paid; and the constables of each town are required from time to time to observe and perform the orders that shall be given them as aforesaid, on pain of being fined to the use of the poor within such town, not exceeding forty shillings.

Provision for keeping a watch in another form where it may be judged better.

Sect. 4. Provided nevertheless, and be it further enacted by the authority aforesaid, that in any town where the members of the council and the justices of the peace within such town, together with the selectmen thereof, or the selectmen by themselves, where no member of the council nor justice dwells, shall judge that a watch may be kept in such town more for the benefit and safety thereof in other manner than is herein before directed, the inhabitants also agreeing to support the charge thereof, the justices in the court of ge-

neral sessions of the peace within the county where such town doth lie, upon application to them made in that behalf, are hereby empowered and authorized to direct and order the rule for apportioning and levying of such sum upon the inhabitants and residents in such town as shall be granted by the town for that purpose, in such manner as they shall judge most equal and reasonable, by poll, estate or both, to be applied accordingly.

CHAPTER LXVI.

AN ACT IN ADDITION TO THE ACT FOR REGULATING OF TOWNSHIPS, &c.

BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the freeholders and other inhabitants of each town duly qualified to vote in town affairs, at the time of their annual meeting for the choice of town officers, shall choose a suitable person to be treasurer for such town, who shall be sworn before a justice of the peace to the true and faithful discharge of his trust, who is hereby empowered to administer the said oath; and such treasurer shall, and hereby is empowered to demand and receive all debts, rents and dues belonging or owing to such town, or the poor thereof, and to sue for and recover the same by due process in the law, and shall pay out such monies, according to order from the selectmen or overseers of the poor, pursuant to such instructions as they shall receive from the town; and every such treasurer shall annually make and render a true account to the town of all his receipts and payments, and shall have such allowance for his service as shall be agreed and ordered by the town.

Town treasurer to be annually chosen.

His power.

To account.

CHAPTER LXVII.

AN ACT FOR PUTTING THE MILITIA OF THIS PROVINCE INTO A READINESS FOR DEFENCE OF THE SAME.

WHEREAS by the law of this province it is already provided, "that in case of alarms made either from a seaport town or other town lying frontier to, or in danger of an enemy, the captain or captains of the adjacent towns shall forthwith go or send such relief as they shall judge meet for the offence of the enemy and defence of themselves, &c." but forasmuch as the occasion may be such and so sudden as it may be necessary to call together, arm, array, and put into a posture for war the whole militia and forces of one or more regiments for the defence of the province and his majesty's subjects therein, in case of invasion or near approach of an enemy, before the notices thereof can reach the captain general or commander in chief, to have directions or orders from him for the same,

Military commission officers empowered, by force of arms to encounter any hostile enterprise.

SECT. 1. Be it therefore enacted and declared by his excellency the governor, by and with the advice and consent of the council and representatives, in general court assembled, and by the authority of the same, that all persons commissioned by the captain general or commander in chief of this province, for the time being, to bear office in any military company or troop within the same, be, and hereby are empowered and authorized by virtue of such commission, when and as occasion shall require, in the cases and to the intents and purposes abovesaid, to arm, array and weapon the company or troop respectively under their command, or part of them, and by force of arms, to encounter, repel, pursue, kill and destroy any that shall appear in hostile manner to attempt or enterprise the destruction, invasion, detriment or annoyance of any of his majesty's subjects, forts, garrisons, towns or plantations within this province. And that such officer or officers, so taking to arms, shall forthwith despatch notice to his or their superiour officer of his or their motion, and the occasion thereof, and observe such commands and orders as he or they shall receive from him.

Colonel or chief officer of any regiment, his power.

SECT. 2. And be it further enacted by the authority aforesaid, that the colonel or chief officer of each regiment be, and hereby is empowered and authorized, as occasion shall require, in any of the cases, and to the intents before mentioned, from time to time to assemble in martial array, and put into warlike posture the whole militia of the regiment

under his command, or such part of them as he shall think needful, upon any alarm, invasion, or notice of the appearance of an enemy by sea or land, and the regiment, companies or troops so armed, arrayed, and put into warlike posture, or part of them, to lead, conduct and employ, or to appoint some other fit person by writing under his hand to lead, conduct and employ them as well within the regiment and county whereto they belong, as into any other adjacent county or place within this province, for the assisting, succouring and relieving any of his majesty's subjects, forts, garrisons, towns or places, that shall be assaulted by an enemy, or in danger thereof, and with such party, companies or troops, by force of arms, to encounter, repel, pursue, kill and destroy such enemy, or any of them, by all fitting ways, enterprises and means whatsoever. And the colonel or chief officer of such regiment so taking to arms, or sending forth any party of men, shall forthwith post away the intelligence and occasion thereof unto the captain general or the commander in chief for the time being, and shall attend and observe such directions and orders as he shall receive from him. And in case it happen the colonel or chief officer of any regiment be out of the limits or precincts of the regiment, for which he is or shall be commissionated, at the time of any invasion, attack or appearance of an enemy, or alarm given from any of the neighbouring towns or regiments, the next commission officer then within the regiment shall have, use and exercise the same powers and authorities herein before granted, until the return of the colonel, or other superiour officer; and such officer so acting shall post away the intelligence thereof, with the occasion for the same, as aforesaid, unto the captain general, or the commander in chief for the time being, and shall attend and observe such directions and orders as he shall receive from the captain general or commander in chief therein.

To post away intelligence to the captain general, &c.

The like power given to the next commission officer in case of the absence of the chief officer.

And for the better preventing of false alarms by disorderly shooting off guns in the night,

Sect. 3. Be it further enacted by the authority aforesaid, that no person or persons whatsoever in any town or garrison, shall during the time of war, or of keeping a military watch in such town or garrison, presume to discharge or shoot off any gun or guns after the sun's setting or before the sun's rising, unless in case of alarm, approach of an enemy, or other necessary defence, on pain that every person, so offending, and being thereof convicted before one or more of his majesty's justices of the peace, shall forfeit and pay the sum of twenty shillings for each gun so discharged, one moiety thereof to and for the use of the poor of the town where the offence shall be committed, and the other moiety to him or them that shall inform or prosecute for the same;

Penalty for shooting off guns after sunset, and before sunrising.

and if such offender shall not have wherewith to answer the said fine, or shall refuse or neglect to pay the same, then he shall be set in the stocks, not exceeding two hours time.

And in case any person so offending be belonging to any garrison or forces in actual service, and borne in his majesty's pay, he shall be punished at the discretion of a court martial, or the commission officers of the garrison, company, or troop whereto he belongs, by putting into the bilboes, laying neck and heels, or riding of the wooden horse.

CHAPTER LXVIII.

AN ACT FOR THE REGULATING OF PRISONERS, AND TO PREVENT ESCAPES.

Prison keepers to return a list of their prisoners.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and it is enacted by the authority of the same, that every gaoler, or keeper of the king's prisons within the several counties in this province, at the opening of the court of assize and general gaol delivery, court of oyer and terminer, and court of general sessions of the peace, respectively to be holden within such county from time to time, shall return a list and certify unto such court the names of all prisoners then in his custody, with the cause of their commitment, and also the names of all other prisoners that shall be committed unto him during the sitting of any such court, whereby the justices of the said courts respectively may take cognizance thereof, and as well for the king as for the parties may proceed to make deliverance of such prisoners according to law, for the crimes proper to the jurisdiction of such court, on pain that every gaoler or prison keeper, for each default by him made in that respect, shall forfeit such sum as shall be set upon him by the justices of the court, not exceeding ten pounds.

Prison breach or flight to be accounted one evidence.

SECT. 2. Be it further enacted by the authority aforesaid, that whosoever breaketh prison, or shall make his escape from an officer, after his being arrested or imprisoned for any crime, his breach of prison or flight shall be accounted and esteemed in the law one evidence to convict him of the crime wherewith he stands charged in the warrant for his apprehension or commitment.

And if any person whatsoever shall directly or indirectly by any ways or means howsoever convey any instrument, tool or other thing whatsoever, to any prisoner, or into the prison, whereby such prisoner or any other prisoner either may or might break prison, or work him or herself unlawfully out of the same, every person so offending, and being thereof convicted, shall forfeit and pay such fine, as by the discretion of the court shall be imposed and set upon such offender, according to the nature of the cause of the prisoner's commitment, not exceeding twenty pounds, or suffer corporal punishment by whipping, not exceeding twenty stripes.

Penalty on persons that shall convey any instrument or tool into the prison.

And if it happen any prisoner or prisoners do make his or their escape by means of any instrument, tool or other thing conveyed as aforesaid, the person or persons conveying the same shall be fined, not exceeding five hundred pounds, or be corporally punished by whipping, not exceeding thirty-nine stripes, and find sureties for the good behaviour, during the space of one year, at the discretion of the court, according to the nature of the crime or crimes wherewith the prisoner or prisoners stood charged in their mittimus, or warrants of commitment, and other circumstances aggravating the offence. And if any prisoner or prisoners so escaping shall stand convict of any capital crime, the person or persons assisting or furthering their escape as aforesaid, over and above their being fined or corporally punished as before is directed, and bound to the behaviour, shall also be stigmatized or burned in the forehead or on the cheek with a hot iron of the figure of the letter B.

Further penalty in case any prisoner by means of such instrument, &c. do escape.

Sect. 3. And further it is enacted by the authority aforesaid, that if the prisoner or prisoners so escaping were imprisoned for debt, the person or persons assisting and furthering their escape as aforesaid shall be liable to pay the full debt owing to the creditor or creditors, at whose suit such prisoner or prisoners stood committed, to be recovered by action or actions, upon the case therefore to be brought against the person or persons so offending as aforesaid, who shall also be fined or corporally punished as aforesaid, at the discretion of the court, not exceeding the fine or punishment before mentioned.

Escape of prisoners for debt.

Sect. 4. And be it further enacted, that every gaoler or prison keeper that shall voluntarily suffer any prisoner or prisoners committed to his custody to escape, upon the conviction thereof shall undergo and suffer the like pains and penalties as the prisoner or prisoners so escaping should by law for the crime or crimes wherewith he or they stood charged by the warrant or warrants of commitment, if the prisoner or prisoners had thereof been convict.

Penalty on the gaoler for a voluntary escape.

Provided, that if any person assisting and furthering the escape of any prisoner in manner as aforesaid, or if the

Proviso.

keeper of the prison that shall voluntarily suffer to escape as aforesaid, shall by any ways or means recover any prisoner or prisoners so escaping, and return them back to prison again before prosecution had and judgment entered up against such person or prison keeper for such escape, which shall not be until six months past next after the escape, in such case the person or prison keeper so offending shall be liable to no further punishment than to pay such fine as the court that shall have cognizance thereof in their discretion shall think fit to set upon him, according as the offence may be aggravated by the circumstances attending the same, and the degree of the crime wherewith the prisoner stands charged.

For a negligent escape.

And in case the escape of any prisoner happen through the negligence of the gaoler or prison keeper, he shall pay such fine as the justices of the court, in their discretion, before whom the prosecution shall be, shall impose and set upon him according to the nature or degree of the offence, for which the prisoner escaping was taken and imprisoned. And if the prisoner so escaping were imprisoned for debt, the prison keeper shall be answerable to the creditor for the full debt, and he shall have his remedy against the prisoner.

Fines and forfeitures, how to be applied.

All fines and forfeitures arising by virtue of this act shall be applied to and for the repairing, maintaining and upholding of the prison within the county where the offence shall be committed, and be paid in to the county treasurer to be employed accordingly, and not otherwise.

Escape of debtors through defect of the prisons to be answered by the county.

SECT. 5. And be it further enacted by the authority aforesaid, that where the escape of any prisoner or prisoners for debt shall happen through the defect or insufficiency of any prison, from and after the twenty-fifth day of March next, in the year one thousand seven hundred and one, the county shall make good such debt as the prisoners so escaping did justly owe unto the creditor or creditors, at whose suit he was imprisoned, and the county shall have their remedy against the prisoner.

Prisons to be erected in each shire or county town.

SECT. 6. And further it is enacted, that there be sufficient prisons forthwith provided within the several counties, and from time to time kept so; and that the said prisons be erected and maintained in the shire, or county town of each county respectively, and in such other towns as the court of general sessions shall see needful. And the court of general sessions of the peace holden in the several counties, are to give effectual order thereabout, any law, custom or usage to the contrary notwithstanding.

CHAPTER LXIX.

AN ACT RELATING UNTO THE OFFICE AND DUTY OF A CORONER.

Coroners to take inquests on dead bodies.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that every coroner, within the county for which he is appointed, shall be, and hereby is empowered to take inquests of felonies, and other violent and casual deaths committed, or happening within his precinct. And before he undertake the execution of his said office, shall take the following oath for his due and faithful performance thereof, before the governor, lieutenant governor, or any two or more of the council, or such other person or persons as shall be thereto appointed by the governor, that is to say,

To be sworn.

Coroner's Oath.

You swear that well and truly you shall serve our sovereign lord the king in the office of a coroner, and as one of his majesty's coroners of the county of S. and therein you shall truly and diligently do and accomplish all and every thing and things appertaining to your office, after the best of your cunning, wit and power, for the profit and good of the inhabitants within the said the county, taking such fees as you ought to take by law, and not otherwise. So help you GOD.

Coroner to make out warrants for jurors.

SECT. 2. And be it further enacted by the authority aforesaid, that when and so soon as any coroner shall be certified of the dead body of any person supposed to have come to a violent and untimely death, found or lying within his county or precinct, he shall make out his warrant directed unto the constables of the same town where such dead body lies, or of three or four of the next adjacent towns, if need be, requiring them forthwith to summon a jury of good and lawful men of the same town, or such number as shall be sufficient, with those sent for from the neighbouring towns to make up eighteen in all, to appear before him at the time and place in the said warrant expressed, which warrant shall be made in this form, viz.

Form of the warrant.

Suffolk ss. To the constables of B. or to any or either of them. Greeting.

These are in his majesty's name to require you, immediately upon the receipt and sight hereof, to summon and warn good and lawful men of the said town, to be and appear before me, one of the coroners of the said county of S. at [house or place] within the said town of B. betwixt the hours of and of the clock in the noon of this present day of then and there to inquire upon the view of the body of a certain person there lying dead,

how and in what manner he came to his death: fail not herein at your peril, as you will answer the contrary.

Given under my hand and seal at B. the day of in the year of our Lord and in the year of his majesty's reign.

By me W. G. one of the coroners of the county abovesaid.

Constables to execute the coroner's warrant.

And every constable unto whom any such warrant shall come shall forthwith execute the same, and repair unto the place at the time therein mentioned, and make return of the warrant, with his doings therein, unto the coroner that granted the same.

Penalty for default.

And every constable failing of performing his duty by such warrant required of him, or returning the same as aforesaid, shall forfeit the sum of forty shillings.

Penalty for juror's default.

Also every person summoned and warned to be a juror, failing to appear accordingly, shall also forfeit the sum of forty shillings, without a reasonable excuse for the same be made unto, and allowed of by the coroner. The aforesaid several fines or forfeitures to be to and for the defraying of the charges arising and happening within the same county, and towards the defraying the necessary charges of the coroner and jurors, to be recovered by action, bill, plaint or information therefor to be brought by the coroner in any of his majesty's courts of record.

Fines how to be applied.

And the coroner shall swear fourteen or more of the jurors that appear, and give the foreman, to be by him appointed, his oath upon view of the body, in this form, that is to say,

Jurors' oath.

You shall diligently inquire, and true presentment make, on the behalf of our sovereign lord the king, how and in what manner A. B. here lying dead, came to his death; and you shall deliver up to me, his majesty's coroner, a true verdict thereof, according to such evidence as shall be given to you, and according to your knowledge. So help you GOD.

And then shall swear the rest of the jurors by three or four at once in this form, viz.

All such oath as L. M. the foreman of this inquest for his part hath taken, you and every one of you shall well and truly observe and keep on your parts. So help you GOD.

Coroner's charge to the jurors.

The jury being sworn, the coroner shall give them a charge upon their oaths to declare of the death of the person, whether he died of felony, or by mischance and accident? and if of felony, whether of his own or of another's? and if by mischance or misfortune, whether by the act of God or of man? and if he died of another's felony, who were principals and who accessaries? who threatened him of his life or members? with what instrument he was struck or wounded? and so of all prevailing circumstances that can come by presumption.

And if by mischance or accident, by the act of God or man, whether by hurt, fall, stroke, drowning, or otherwise, to inquire of the persons that were present, the finders of the body, his relations or neighbours, whether he was killed in the same place, or elsewhere? and if elsewhere, by whom and how he was thence brought? and of all other circumstances.

And if he died of his own felony, then to inquire of the manner, means or instrument, and circumstances concurring.

Proclamation to be made.

After the jury being charged, they must stand together, and let proclamation be made for any that can give evidence to draw near, and they shall be heard.

Warrant to be sent out for witnesses.

And every coroner is hereby further empowered to send out his warrant for witnesses, commanding them to come to be examined before him, and to declare their knowledge concerning the matter in question, and to administer an oath unto the witnesses in this form, that is to say,

Witnesses' oath.

All such evidence as you shall give to this inquest, concerning the death of A. B. here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

Witnesses to be bound over.

The examination of such witnesses to be taken in writing under their hands; and if they relate to the trial of any person concerning the death of the party found dead, then shall the coroner bind over such witnesses by recognizance in a reasonable sum, not less than twenty pounds a piece, personally to appear at the next assizes, or court of oyer and terminer and gaol delivery, to be holden within the same county, then and there to testify their knowledge concerning the death of the said A. B.

And the jury having viewed the body, heard the evidence, and made what inquiry they can into the manner and causes of the death of the person, they shall draw up and deliver unto the coroner their verdict thereupon in writing, under their seals in manner following, which shall pass by indenture interchangeably betwixt the coroner and the jury, that is to say,

Inquisition.

Suffolk ss. An inquisition indented, taken at B. within the said county of S. the day of in the year of the reign of our sovereign lord by the grace of God, of England, Scotland, France and Ireland, king, defender of the faith, &c. before T. E. gent. one of the coroners of our said lord the king, within the county of S. aforesaid, upon view of the body of A. B. of B. aforesaid then and there being dead, by the oaths of I.W. R.W. H.P. T.A. S.B. I.K. L.S. E.H. R.G. P.D. C.M. S.O. G.B. and N.S. good and lawful men of B. aforesaid within the county aforesaid, who, being charged and sworn to inquire for our said lord the king, when, and by what

means, and how the said A. B. came to his death, upon their oaths do say, &c.

Then insert how, where, at what time, by what means, with what instrument, and in what manner, the party was killed, or came by his death.

And if it appear the person to have been killed and murdered by another that is known, the inquisition must be concluded after this manner, viz.

And so the jurors aforesaid, upon their oaths aforesaid, say, that the aforesaid R. S. in manner and form aforesaid, the aforesaid A. B. then and there feloniously did kill and murder, against the peace of our sovereign lord the king, his crown and dignity.

If it appear to be self murder, the inquisition must conclude after this manner, viz.

And so the jurors aforesaid say upon their oaths, that the said A. B. in manner and form aforesaid, then and there voluntarily and feloniously, as a felon of himself, did kill and murder himself, against the peace of our sovereign lord the king, his crown and dignity.

If it appear the person to be slain by misfortune, the inquisition must conclude after this manner, viz.

And so the jurors aforesaid say upon their oaths, that the aforesaid A. B. in manner and form aforesaid, was killed, or came to his death by misfortune.

If by the hands or means of any other person; thus, viz.

The aforesaid R. F. the aforesaid A. B. by misfortune and contrary to his will, in manner and form aforesaid, did kill and slay. In witness whereof, as well I the coroner aforesaid, as the jurors aforesaid, to this inquisition have interchangeably put our hands and seals, the day and year abovesaid.

And the coroner shall make return of all such inquisitions taken before him unto the justices of assize, oyer and terminer and gaol delivery.

Also upon any verdict found of the death of a person by the felony or misfortune of another, shall speedily inform one or more of the next justices of the peace thereof; to the intent, that such person killing, or being any ways instrumental to the death of another, may be apprehended, examined and secured in order to a trial.

Fees.

SECT. 3. And be it further enacted by the authority aforesaid, that over and above the fee already allowed by law, the coroner shall be allowed the sum of ten shillings per diem for his travel and expenses, upon every inquisition by him taken, and every juror attending the said service, shall be allowed two shillings per diem, which allowances shall be paid out of the estate of the dead person, or by the parent or master where any apprentice or child, under age shall happen to be killed; and in want thereof to be paid by

the county treasurer out of the treasury of such county, upon representation thereof made by the coroner to the quarter sessions.

And every coroner, within the county for which he is appointed, shall be, and hereby is empowered to serve and execute all writs and processes directed unto him against the sheriff or marshal of the same county, and to return jurors de talibus circumstantibus, where need shall be, to fill up the jury or juries, in all causes wherein the sheriff or marshal is concerned, or related to either of the parties in any cause; and shall have the like fee for serving of writs in civil causes, as is allowed by law unto the sheriff. Coroners to serve writs, &c.

CHAPTER LXX.

AN ACT PROVIDING FOR POSTHUMOUS CHILDREN.

Forasmuch as it often happens, that children are not born till after the death of their fathers, and also have no provision made for them in their wills,

Sect. 1. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that as often as any child shall happen to be born after the death of the father, without having any provision made in his will, every such posthumous child shall have right and interest in the estate of his or her father, in like manner as if he had died intestate; and the same shall accordingly be assigned and set out as the law directs for the distribution of the estates of intestates. Posthumous children to have a proportion &c. See resolve at the end of this act.

And whereas through the anguish of the deceased testator, or through his solicitous intention though in health, or through the oversight of the scribe, some of the testator's children are omitted, and not mentioned in the will, many children also being born after the making of the will, though in the life time of their parents,

Sect. 2. Be it therefore enacted by the authority aforesaid, that any child or children, not having a legacy given them in the will of their father or mother, every such child shall have a proportion of the estate of their parents given and set out unto them as the law directs for the distribution of the estates of intestates. And such as have no legacy given them.

Provided such child or children have not had an equal proportion of his estate bestowed on them by the father in his life time.

And whereas it sometimes happens, that a man, having formerly made his will, doth afterwards marry a wife, and then dies, and the will comes to be proved, to the injury of such wife,

Widows not to be prejudiced by wills made before marriage.

In all such cases the widow shall have such proportion of her late husband's estate assigned her, as if he had died intestate, as the law directs for the distribution of the estates of intestates; any law, usage or custom to the contrary notwithstanding.

Provided, that nothing in this law shall extend to any estate disposed of by will, already settled.

Sect. 3. At a great and general court begun and held at Boston on the 28th day of May, 1718, a question being moved upon the second section or paragraph in the act providing for posthumous children, and such as have no legacy given them by will, made in the twelfth year of king William, viz. Whether the said act doth as well extend to the grandchildren, in case of the death of the father or mother, as to the child himself, if living?

Resolved in the affirmative, and that the law is so to be understood and practised, any usage or custom to the contrary notwithstanding.

CHAPTER LXXI.

AN ACT IN ADDITION TO THE ACT FOR THE EQUAL DISTRIBUTION OF INSOLVENT ESTATES.

Sect. 1. Whereas in and by the act, intitled an act for the equal distribution of insolvent estates, made and passed in the eighth year of his present majesty's reign, amongst other things therein contained, it is enacted, "that every judge of probate of wills and granting administrations, within the respective counties, be and thereby is fully authorized and empowered to call before him, and to require and administer an oath unto any person or persons, probably suspected by any executor or administrator to have concealed, embezzled or conveyed away any of the money, goods or chattels left by the testator or intestate, for the discovery of the same, and in case any such suspected person was betrusted by the person deceased, attended upon, or was otherwise conversant with or near unto him in the time of sickness, or left in possession of the estate, whereby to strengthen and make the suspicion more violent, and shall refuse to clear

and acquit him or herself upon oath, it shall and may be lawful for, and the judge is empowered to commit such person, so refusing to swear, unto the gaol of the county, there to remain until he or she shall comply to discharge him or herself upon oath as aforesaid, or be released by consent of the executor or administrator,"

And whereas it has been observed, that sometimes executors or administrators have neglected their duty, or been too favourable in not complaining of persons of whom there has been just suspicion of making concealments, embezzlements, or conveying away part of the estate belonging to their testator or intestate, whereby great wrong and injury has ensued, for remedy whereof,

All persons interested may complain of embezzlement.

Be it enacted by his excellency the governor, council and representatives, in general court, and by the authority of the same, that every judge of probate be, and hereby is alike empowered to call before him, and to require and administer an oath unto any person or persons, probably suspected of making any concealment, embezzlement, or conveying away any of the monies, goods or chattels, of any person deceased, as well upon the complaint of any heir, creditor, legatary, or other person having lawful right or claim to or in such estate, as of the executor or administrator, and in case the party suspected (such suspicion being strengthened, and made more violent for any of the causes before mentioned) shall refuse to discharge him or herself upon oath, then to proceed against them by imprisonment, as the afore recited act directs.

Saving.

Saving to any person aggrieved the liberty of an appeal from any such sentence to the governor and council, the appellant giving security to prosecute such appeal with effect, in manner as is by law directed.

CHAPTER LXXII.

AN ACT DIRECTING THE PROCEEDINGS AGAINST FORCIBLE ENTRY AND DETAINER.

WHEREAS in and by the act, intitled an act for the punishing of criminal offenders, amongst other things therein contained, it is declared, "that every justice of the peace in the county where the offence is committed be and is empowered to make inquiry of forcible entry and detainer, and cause the same to be removed,"

For the better directing of justices in such their proceedings,

Justices on complaint made of forcible entry, &c. to repair to the place.

SECT. 1. Be it enacted and declared by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that upon complaint made to any one or more justices of the peace of any wrongful and forcible entry made into any lands, tenements or other possessions, lying within the county where such justice or justices dwell or reside, or of any wrongful detainer of any lands, tenements or other possessions with force and strong hand, every such justice or justices within convenient time, at the costs of the party grieved, shall go to the place where the force is, taking with him the sheriff or his deputy, and other sufficient power of the town or county at his discretion, if need be, to aid him, and all the people of the county, as well the sheriff as others, shall be attending to the said justice or justices, and assist him or them to arrest such offenders upon pain of imprisonment, and to make fine to the king.

Assistance to be given to justices under a penalty for neglect.

Upon an inquisition found, restitution to be made.

And that two justices, quorum unus, shall have authority and power to inquire by the oaths of the people of the same county, as well of them that make such forcible entry into lands, tenements, or other possessions, as of them that hold the same with force. And if it be found upon such inquiry that a forcible entry is made into any lands, tenements, or possessions, or that the same are held with force, then such justices shall cause the same lands, tenements or possessions to be reseized, and thereof the party to be again put into possession, who in such sort was put out or holden out.

A jury to be empaneled and sworn.

And to the end that inquiry be so made as aforesaid, such justices shall make out their warrants or precepts, directed to the sheriff of the same county, or his deputy, commanding him on the king's behalf to cause to come before them eighteen sufficient and indifferent persons dwelling near unto the lands or tenements, so entered or held as before, whereof fourteen at least to be empaneled, to inquire in this behalf, each of whom to have freehold lands or tenements of the yearly value of forty shillings at the least, who shall be sworn by such justices well and truly to inquire of such forcible entry, or forcible detainer, and to return a true verdict therein, according to their evidence; and if the sheriff shall make default in not duly executing of such warrant or precept to him directed, he shall be fined the sum of twenty pounds for every default. And every juror summoned by the sheriff, making default by his non-appearance, shall pay a fine of twenty shillings: every justice to be paid ten shillings per diem, the sheriff six shillings per diem, and every juror two shillings per diem, upon every inquiry to be made as aforesaid.

Penalty for default in the sheriff or jurors.

Allowance to justices, &c.

Sect. 2. And be it further enacted by the authority aforesaid, that any justice or justices as aforesaid may impose a fine upon every offender committing such force as aforesaid, not exceeding the sum of forty shillings, and bind them to the good behaviour, and imprison such offenders, till they pay such fine, and find sureties for the behaviour, until the next court of general sessions of the peace within the same county, and then to appear; and if the offence be aggravated by any open and high handed breach of the peace, or otherwise, may bind the offenders over to appear at the next general sessions of the peace, to answer for the same, who may increase the fine, according to the aggravation and circumstances of the offence.

Justice or justices may fine the offender, &c.

All fines arising by virtue of this act to be to and for the use of the county, for defraying of county charges. And the party grieved shall recover treble damages and costs of suit by action of trespass against the defendant or defendants, if it be found by verdict, or in any other manner by due form of law, that they entered into his lands or tenements by force, or after entry did hold with force; any law, usage or custom to the contrary in any wise notwithstanding.

Fines how to be applied.

Provided always, that this act shall not extend, or be construed to extend unto any person or persons that have had the occupation, or have been in quiet possession of any lands, tenements or possessions by the space of three whole years together next before, and his, her or their estate or estates therein not ended or determined.

Proviso.

CHAPTER LXXIII.

AN ACT DIRECTING HOW TOWN OFFICERS SHALL BE SWORN, IN SUCH TOWNS WHERE NO JUSTICE OF THE PEACE DWELLS.

Whereas the law requires, that several town officers be under oath for the true and faithful discharge of their respective offices and trust, to be administered unto them by one of the next justices of the peace, &c. and forasmuch as there are many towns in which no justice of the peace dwells, but are far remote, by reason whereof, the officers annually and from time to time chosen in such towns, whom the law requires to be under oath, are necessitated to travel several miles to be sworn, which occasions great charge, besides difficulties and inconveniences to the inhabitants of such towns,

Wherefore, for the ease of his majesty's subjects in that regard,

Selectmen or the major part of them to swear town officers, in towns where no justice dwells.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and it is enacted by the authority of the same, that in each town within this province, where no justice of the peace dwells, the selectmen of such town for the time being or the major part of them be, and are hereby authorized and empowered to administer to such person as from time to time shall be chosen clerk of such town the oath by law appointed to be taken by each town clerk for the faithful discharge of that office, and to all other officers of such town, whom the law requires to be sworn, the oath to their several and respective places belonging, as by law established.

A record to be made thereof.

And such selectmen shall cause a record to be made in the town book of the swearing of all such officers; any law, usage or custom to the contrary in any wise notwithstanding.

CHAPTER LXXIV.

AN ACT RELATING TO THE PROSECUTION OF APPEALS.

Whereas it has been too often practised, that persons, having judgment entered up against them in the inferiour court of common pleas, do claim the liberty of the law to appeal from such judgment unto the next superiour court of judicature, court of assize and general gaol delivery, to be holden for or within the same county, and after their appeal admitted, neglect to give security for prosecution thereof as the law requires, or after security given, fail of prosecuting their appeal, whereby it is very obvious they designed nothing more than to stop execution, and to delay and hold out the adverse party from his just debt or damages recovered by such judgment, to his grievous hurt,

For redress whereof,

Security for appeal to be given in or out of court within seven days after judgment.

Sect. 1. Be it declared and enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that every person appealing from the judgment of any inferiour court of common pleas unto the superiour court of judicature, court of assize and general gaol delivery, shall enter into recognizance with sufficient sureties to prosecute such appeal with effect, which recognizance is to be taken before such inferiour court whilst sitting, or before one or more of the

justices of the same with the clerk out of court, within the space of seven days next after judgment given, and not afterwards; and if any person, claiming and being admitted to appeal as aforesaid, shall not give security for prosecution thereof in manner aforesaid, either before or within the said space of seven days next after judgment given, every claim and allowance of such appeal shall be utterly null and void, as if the same had never been made and granted; and in such case after expiration of the said seven days, the clerk of such inferiour court, upon demand of the party for whom the judgment was given, or of his attorney, shall ex officio make and issue out execution thereupon.

On failure, execution to be granted.

Sect. 2. And be it further enacted by the authority aforesaid, that if any person, having appealed and given security for prosecution thereof as aforesaid, shall neglect to prosecute the same with effect in manner as the law provides, the party that obtained the judgment in the inferiour court of common pleas, entering his complaint in the superiour court of judicature, court of assize and general gaol delivery, to which such appeal did lie, and producing attested copies of the judgment, appeal and recognizance given for prosecution thereof, the justices of the said superiour court of judicature, court of assize and general gaol delivery, shall affirm such judgment of the inferiour court of common pleas, with the costs arising upon the suit there, and grant further costs for entering and prosecuting the complaint as aforesaid, and award execution accordingly. The fee to be paid for entering of such complaint shall be the same as for entry of an action, and the party's attendance and charges the same as the law allows in like cases.

Judgment to be affirmed, and execution awarded by the superiour court, upon non-prosecution of appeal.

And the like process and methods shall be had and observed in the inferiour court of common pleas, for persons that shall fail to prosecute appeals made from judgment given upon trials before a justice of the peace, any law, usage or custom to the contrary in any wise notwithstanding.

Inferiour courts to observe the like methods.

Sect. 3. And be it further enacted by the authority aforesaid, that all recognizances given for prosecuting of appeals as aforesaid shall remain good for the benefit of the parties respectively for whom they were taken, to bring a suit thereon, to recover all intervening damages occasioned by such parties being delayed from the time of rendering the first judgment, unto the time when such appeal should have been tried, and the sureties in such recognizance named shall be liable and obliged to satisfy the judgment given for such intervening damages, with the additional costs of suit, in case of the principal's avoidance and return made of non est inventus, upon the execution granted against him, and the judgment for the same shall be affirmed against such sureties, and execution be awarded accordingly, as is by law provided referring to sureties upon mean process.

Sureties upon appeals to answer intervening damages and cost, in case.

Proviso. Provided, that such sureties be served with a writ of scire facias within twelve months next after rendering of judgment upon the trial on such recognizance, and not afterwards.

CHAPTER LXXV.

AN ACT PROVIDING, THAT IN SUITS WHERE GOODS OR OTHER ESTATE IS ATTACHED, THE DEFENDANT BE SUMMONED.

To the intent that all persons may have due notice to prepare and make their defence in every action or suit commenced against them,

Summons to be left at the defendant's place of usual abode, &c. SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when the goods or estate of any person shall be attached at the suit of another in any civil action, a summons in form as by law is prescribed shall be delivered to the party whose goods or estate are attached, or left at his or her dwelling house, or place of last and usual abode, fourteen days before the day of the sitting of the court where such attachment is returnable; and in case the defendant was at no time an inhabitant or sojourner within this province, then such summons to be left with his or her tenant, agent or attorney, and the serving thereof to be certified by a sworn officer that executed the attachment, or by affidavit made in court by the person that delivered the same, and by one other credible witness then also present, otherwise the writ shall abate.

How to be certified.

How to be served upon writ of dower, or scire facias. And upon suits brought hither by writ of scire facias, or writ of dower, when the defendant in any such suit shall not be served therewith in his own person, an attested copy of the writ and of the service thereof, under the hand of the sheriff or his deputy that executed the same, shall be left at the house or place of usual abode of the defendant; and in case such defendant was at no time an inhabitant or sojourner within this province, then with his or her tenant, agent or attorney as aforesaid, by the like number of days before the day of the court's sitting where such writ is returnable, as is required for the service thereof; and in writ of dower a copy thereof, with the service alike attested as before, shall also be left with the tenant or occupant of the house or land whereof dower is demanded to be rendered, or in or upon the

same, and the sheriff or his deputy shall certify the same in his return, or otherwise the writ shall abate.

Sect. 2. And further it is enacted by the authority aforesaid, that when it happens the party against whom suit is brought not to be an inhabitant or sojourner within this province, or to be absent out of the same at the time of commencing such suit, and shall not return before the time for trial, the justices of the court where such suit is brought shall continue the action to the next court; and if the defendant do not then appear by himself or attorney, and be so remote that the notice of such suit depending could not probably be conveyed to him during the vacancy, the justices at such next court may further continue the action to the court thence next following, and no longer; and in such cases where judgment is entered up by default after two continuances as aforesaid, execution or writ of seizin shall be stayed, and not issue forth until the plaintiff or demandant shall have given bond, with one or more sufficient sureties, in double the value of the estate or sum recovered by such judgment, to make restitution, and to refund and pay back such sum as shall be given in debt or damage, or so much as shall be recovered upon a suit therefor to be brought within twelve months next after entering up of the first judgment, if upon such suit the judgment shall be reversed, annulled or altered, the security aforesaid to be no further answerable than for the recovery that shall be made upon such suit, to be had within twelve months as aforesaid.

Provision in actions brought against persons out of the province.

Security to be given before execution.

Real estates taken in execution, not to be alienated within twelve months.

Provided also, that no real estate taken in execution granted upon such first judgment shall be alienated or passed away until after the expiration of the said twelve months, or after a new trial brought within the said space of twelve months, to the intent that restitution thereof may be made in case as aforesaid.

Proviso for real estates.

CHAPTER LXXVI.

AN ACT FOR THE CONVENIENT AND SPEEDY ASSIGNMENT OF DOWER.

Forasmuch as some direction in the law is necessary that women may be enabled to come by their dower,

Sect. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as the heir

Heir, &c. to render dower within one month next after demand.

or other person having the freehold shall not within one month, next after demand made, assign and set out to the widow of the deceased her dower or just third part of and in all houses, lands, tenements or hereditaments whereof she is dowable at the common law, to her satisfaction according to the true intendment of law, then such widow may sue for and recover the same by writ of dower to be therefor brought against such persons as have, or claim to have right as aforesaid in the said estate, in manner and form following, that is to say:

Writ of dower.

S—— ss. William the third, by the grace of God, of England, Scotland, France and Ireland, king, defender of the faith, &c. To the sheriff of our county of S. his undersheriff or deputy, greeting. Command A. B. of B. within the said county, [addition] that instantly without delay render to C. D. who was the wife of E. D. late of B. aforesaid, [addition] deceased, her reasonable dower which happens to her of a certain messuage or tenement, with the appurtenances, situate in B. aforesaid, in the possession of the said A. B. which was in the seizin and possession of her said husband E. D. and whereof he was seized in his demesne as of fee during the coverture, and whereof she hath nothing (as she saith) and the said C. D. complains that the said A. B. hath divorced her thereof. And unless the said A. B. shall so do, then summon by good and lawful men in your bailiwick the said A. B. that be before our justices of our next inferiour court of common pleas to be holden at B. for the county of S. aforesaid, on the Tuesday of then and there to shew cause, why to the said C. D. her reasonable dower as aforesaid doth not render. And have you the names of them by whom you summon the said A. B. and this writ. Witness E. H. Esq. at B. the day of in the year of our reign, annoque domini,

A. D. clerk.

Sect. 2. And be it further enacted by the authority aforesaid, that upon judgment being given for any woman to recover her dower in any estate of housing and lands, and other hereditaments which were her husband's, reasonable damage shall also be assigned to her from the time of the demand made, and a writ of seizin shall be directed to the sheriff of the county, or his deputy, where such lands, tenements or hereditaments do lie, in manner and form following, that is to say,

Writ of seizin, &c.

S.—— ss. William the third, by the grace of God, of England, Scotland, France and Ireland, king, defender of the faith, &c. To the sheriff of our county of S. his undersheriff or deputy, greeting. Whereas C. D. widow, who was the wife of E. D. late of B. in the county aforesaid [addition] deceased, before our justices of our court of holden at B. for our county aforesaid, on the day of

now last past, did recover her seizin against A. B. of B. aforesaid [addition] of one third part of a certain messuage or tenement, &c. with the appurtenances, situate in B. aforesaid, in the possession of the said A. B. as her dower of the endowment of the said E. D. her certain husband, by our writ of dower, whereof she hath nothing. Therefore we command you, that to the said C. D. full seizin of one third part of the aforesaid messuage or tenement, &c. with the appurtenances, you cause to be had without delay. To hold to her in severalty by metes and bounds. We command you also, that of the goods or chattels of the said A. B. within your precinct, you cause to be paid and satisfied unto the said C. D. at the value thereof in money, the sum of for damages awarded her by our said court for her being held and kept out of her dower aforesaid, and costs expended on this suit, with two shillings more for this writ, and thereof also to satisfy yourself your own fees. And for want of goods or chattels of the said A. B's., to be by him shewn unto you, or found within your precinct to satisfy the same, we command you to take his body, and commit him to the keeper of our gaol in B. in our county aforesaid within the said prison. Whom we likewise command to receive the said A. B. and him safely to keep, until he pay unto the said C. D. the full sum abovementioned, and also satisfy your fees. Hereof fail not, and make return of this writ, and how you shall have executed the same to our next court of to be holden at B. for our said county of S. on the day of next. Witness E. H. Esq, at B. the day of in the year of our reign. Annoque Domini, A. D. clerk.

And where no damages shall be awarded, the writ to run only for seizin and cost of suit.

To run only for seizin and cost, where damages are not awarded.

And the sheriff of the county, or his deputy to whom such writ is directed, is to cause her third part of dower in such estate to be set forth unto her by five freeholders of the neighbourhood upon their oaths (three at least to agree) who shall be sworn before a justice of the peace to set forth the same equally and impartially without favour or affection, as convenient as may be, which oath every justice of the peace is hereby empowered to administer.

Dower to be set forth by 5 freeholders of the neighbourhood upon oath.

Sect. 3. And be it further enacted by the authority aforesaid, that of inheritances that be entire, where no division can be made by metes and bounds, so as a woman cannot be endowed of the thing itself, she shall be endowed thereof in a special and certain manner, as of a third part of the rents, issues or profits thereof, to be computed and ascertained in manner as aforesaid.

Of entire inheritance that cannot be divided, a third part of the rents or profits to be assigned.

And no woman that shall be endowed of any lands, tenements or other inheritances as aforesaid, shall commit or suffer any strip or waste thereupon, but shall maintain the

No strip or waste to be made.

houses or tenements, with the fences and appurtenances thereof, with which she shall be so endowed, in good repair during her term, and leave the same so at the expiration thereof, and shall be liable to action for any strip or waste by her done, committed or suffered.

No damages to be awarded, when judgment is given by default.

SECT. 4. And be it further enacted by the authority aforesaid, that where the defendant in a writ of dower shall suffer judgment to pass against him by default, no damages shall be awarded against him by such judgment, for having held and kept the demandant out of her dower, but she shall recover the same in like manner as she might sue for or recover damages in other cases, any law, usage or custom to the contrary in any wise notwithstanding.

CHAPTER LXXVII.

AN ACT DIRECTING THE ADMISSION OF TOWN INHABITANTS.

FOR the better preventing of persons obtruding themselves on any particular town within this province, without orderly admission by the inhabitants of such town, or the selectmen thereof, in manner as hereafter is expressed, and for remedying the manifold inconveniences and great charge heretofore occasioned thereby, to the intent also that the selectmen may the more easily come to the certain knowledge of persons and their circumstances, that come to reside and sojourn in such town,

Masters of ships to give a list of all passengers to the receiver of impost under a penalty.

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that every master of ship or other vessel arriving in any port within this province, from any other country, land, island, colony or plantation, at the time of entering his ship or vessel with the receiver of impost, for the time being, shall deliver to such receiver a perfect list or certificate under his hand of the christian and surnames of all passengers, as well servants as others, brought in such ship or vessel, and their circumstances so far as he knows, on pain of forfeiting the sum of five pounds, to the use of the poor of the town or place where such passengers shall be landed or sent on shore, for every passenger that he shall omit to enter his or her name in such list or certificate, upon conviction thereof before his majesty's justices in the court of general sessions of the peace, within the same county where the offence is committed. And every

justice of the peace is hereby empowered, upon complaint made by the selectmen of such town, or some of them to convent such master before him, and to require and take sufficient security of him to appear and answer for his said offence in manner as abovesaid, such complainants also giving bond to prosecute their complaint.

Justices empowered to convent and bind over masters that shall neglect so to do.

Sect. 2. And further it is enacted, that when it shall happen any passenger so brought to be impotent, lame, or otherwise infirm, or likely to be a charge to the place; if such person shall refuse to give security, or cannot procure sufficient surety or sureties to become bound for his saving the town from such charge, in such case, the master of the ship or vessel, in which such person came, shall be, and hereby is obliged and required to carry or send him or her out of this province again, within the space of two months next after their arrival, or otherwise to give sufficient security as aforesaid to indemnify and keep the town free from all charge for the relief and support of such impotent, lame or infirm person, upon demand thereof made by the selectmen, unless such person was before an inhabitant of this province, or that such impotence, lameness, or other infirmity befel or happened to him or her during the passage; and in such case, if they be servants, their masters shall provide for them, and others shall be relieved at the charge of the province.

Security to be given to indemnify the town from charge, &c.

What persons shall be relieved at the charge of the province.

And the justices of the general sessions of the peace are hereby empowered to enjoin and order the performance of what is herein before required of such master accordingly.

Court of general sessions of the peace, to enjoin the observance of this law.

And the receiver of impost is likewise required to inform and notify all masters of ships, and other vessels coming to him to enter, of the import of this act, and what is thereby enjoined and required of them, and not to admit an entry without such list or certificate of the names of the passengers (if any) or that the master give under his hand that he brought none. And every such receiver shall forthwith transmit all lists or certificates of passengers to the town clerk of such town where the ship or vessel that brought them shall lie, that the selectmen may have knowledge of the same; and such town clerk is hereby required to lay all such lists or certificates, returned to him, before the selectmen at their next meeting.

Receiver of impost to transmit lists of passengers to the town clerk.

Sect. 3. And be it further enacted by the authority aforesaid, that from and after the publication of this act, no person whatsoever coming to reside or dwell within any town in this province, other than freeholders or proprietors of land in such town, or those born, or that have served an apprenticeship there, and have not removed and become inhabitants elsewhere, shall be admitted to the privilege of elections in such town, though otherwise qualified, unless such person shall first make known his desire to the select-

Persons not orderly admitted into towns shall not enjoy privileges of elections.

men thereof, and obtain their approbation, or the approbation of the town for his dwelling there.

No town obliged to be at charge for relief of persons not approved as aforesaid, unless &c.

Nor shall any town be obliged to be at charge for the relief and support of any person residing in such town, in case he or she stand in need, that are not approved as aforesaid, unless such person or persons have continued their residence there by the space of twelve months next before, and have not been warned, in manner as the law directs, to depart and leave the town, any law, usage or custom to the contrary notwithstanding.

Persons orderly warned and sent out of any town, returning back, to be proceeded with as vagabonds.

And if any person orderly warned to depart from any town whereof he or she is not an inhabitant, and being sent by warrant from a justice of peace unto the town whereto such person properly belongs, or to the place of his or her last abode, shall presume to return back, and obtrude him or herself upon the town so sent from, by residing there, every person so offending shall be proceeded against as a vagabond.]

CHAPTER LXXVIII.

AN ACT FOR REGULATING OF TRIALS IN CIVIL CAUSES.

Writs, pleas, &c. to be in the English tongue.

Sect. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that all writs, processes, declarations, indictments, pleas, answers, replications and entries, in the several courts of justice within this province, shall be in the English tongue, and no other.

Circumstantial errors not to cause an abatement. Amendments to be made.

And that no summons, process, writ, judgment, or other proceedings in courts or course of justice shall be abated, arrested or reversed for any kind of circumstantial errors or mistakes, where the person and case may be rightly understood and intended by the court, nor through defect or want of form only; and the justices on motion made in court may order amendment thereof.

Costs to be granted upon nonsuits, &c.

Sect. 2. And be it further enacted and declared by the authority aforesaid, that if any person shall cause process to be served upon another on pretence of debt, trespass, or for any other matter or cause, and discontinue his suit, or be nonsuit, the justices of the court where such process is returnable shall give judgment for the defendant to recover reasonable costs.

And in case the defendant in any suit being duly served with process, and return thereof made into the court where the same is returnable, do not appear by himself or his attorney, his default shall be recorded, and judgment be entered up against him thereupon, unless before the jury be dismissed he shall come into court and move for a trial, in which case he shall be admitted thereto upon paying down to the adverse party the costs he has been at so far, and the plaintiff shall pay for entering the action anew. Judgment by default.

SECT. 3. And further it is enacted, that as well the justices of the superiour court of judicature, court of assize and general gaol delivery, as the justices of the inferiour court of common pleas and justices of the court of general sessions of the peace, in each respective county within this province, be, and are hereby respectively empowered to make necessary rules for the more orderly practising in such court, so as that the said rules be not repugnant to the laws of this province, as also from time to time to appoint and settle a clerk to officiate in such court, and to do all things proper to that office, who shall be under oath well and truly to execute and discharge the same. Justices of courts to make necessary rules for practice. To appoint their clerk.

SECT. 4. And be it further enacted by the authority aforesaid, that the clerk of each town respectively within this province, as well as the clerks of the several courts aforesaid, may, and are hereby respectively empowered to grant summons for witness in civil causes, directed to the party to be summoned for witness, which summons shall be made out in form following, that is to say, Town clerk to grant summons for witness.

S—— ss. To A. B. of C. [addition] Greeting. Summons.

You are hereby required, in his majesty's name, to make your appearance before the justices of our lord the king, at the next court of to be holden at B. within and for the county of S. on the Tuesday of to give evidence of what you know relating to an action or plea of then and there to be heard and tried betwixt A. B. of C. [addition] plaintiff, and D. E. of F. [addition] defendant; hereof fail not, as you will answer your default under the pains and penalty in the law in that behalf made and provided. Dated at B. the day of in the year of his majesty's reign. Annoque Domini,

A. D. Clerk.

And if any person or persons who shall be served with lawful process, or summons to testify, depose or give evidence concerning any cause or matter depending in any of the courts aforesaid, and having tendered unto him or them such reasonable sum or sums of money, for his or their costs and charges, as, having regard to the distance of the places, is necessary to be allowed in that behalf, do not appear according to the tenor of the process or summons, having no lawful or reasonable let or impediment to the contrary, Penalty on witnesses for not appearing.

that then the party so making default shall for every offence lose and forfeit forty shillings, and shall yield further recompense to the party aggrieved, according to the loss and hinderance that he shall sustain by reason of the non-appearance of such witness or witnesses, the said forfeiture and damages to be recovered by the party so grieved against the offender or offenders by action of debt in the inferiour court of common pleas within the same county, wherein no essoign, protection or wager of law to be allowed.

Damages how to be recovered.

And two shillings per diem shall be accounted due satisfaction to any witness for his travel and expenses, and no more to be allowed in civil causes; and if such witness live within three miles of the place of the court's sitting whereto he is summoned, and be not to pass any ferry, then one shilling and six pence per diem shall be accounted sufficient.

Witnesses' allowance.

And no person serving as a justice, juror, witness or otherwise, shall be required to use any other ceremony in taking of their respective oaths, than lifting up the hand, as has been accustomed.

Ceremony to be used in swearing.

Sect. 5. And it is further declared and enacted by the authority aforesaid, that it shall be in the liberty of the party aggrieved at the judgment given in any inferiour court of common pleas to appeal therefrom unto the next superiour court of judicature to be held within or for the same county; and the party so appealing, before his appeal be allowed, shall give sufficient security to prosecute the same with effect, and to answer and pay all intervening damages occasioned to the appellee by his being delayed, with additional costs, in case the judgment be affirmed; and execution shall be stayed and suspended until after the trial had upon the appeal.

Liberty of appeal from the inferiour court.

Sureties for appeal, how far liable.

Execution stayed.

Sect. 6. And further it is enacted, that the party appellant shall produce, and give in to the court where such appeal is to be tried, attested copies of the writ, judgment, and of all the evidences filed in the inferiour court; and each party shall be allowed the benefit of any new and further plea and evidence.

Appellant to produce the case.

Each party to have benefit of new plea and evidence.

Saving always the liberty of appeal unto his majesty in council, as by his majesty's royal charter in that behalf is provided.

Sect. 7. And be it further enacted by the authority aforesaid, that execution in any case shall not be granted until the expiration of twenty-four hours next after the entering up of judgment.

Execution not to be granted in 24 hours.

And that no person imprisoned upon mesne process shall be held in prison upon such process above the space of thirty days next after the rising of the court where the same is returnable, notwithstanding judgment thereupon recovered, unless such person be continued there by having his body taken in execution; nor shall the prison keeper discharge

Persons imprisoned on mesne process not to be dis-

any such prisoner having judgment entered up against him, within the said space of thirty days after the court's rising, to the intent his body may be taken in execution, but by special order of the party at whose suit he stands committed, signified in writing under his hand. charged till 30 days after judgment.

Nor shall any goods or other estate, attached to respond the judgment that shall be recovered on suit brought, be released or discharged from such arrest until the expiration of thirty days next after rendering of judgment for the plaintiff in such suit, to the intent that he may take the same by execution for satisfying of such judgment in whole or in part, so far as the value thereof can extend, if he think fit, unless the judgment be sooner or otherwise satisfied; any law, usage or custom to the contrary notwithstanding. Goods or estate attached, not to be released in 30 days after judgment.

Sect. 8. At a great and general court begun and held at Boston on the 26th day of May, 1703, Be it enacted by his excellency the governor, council and representatives in general court assembled, and by the authority of the same, that all pleas in bar or abatement shall be made originally in the inferiour court, in suits there brought, and at the first bringing forward thereof, before any issuable plea made; and when a writ shall by judgment of court be barred or abated, and the plaintiff or demandant appeals from such judgment to the superiour court of judicature, if upon hearing the appeal, the superiour court, notwithstanding the pleas made in bar or abatement, adjudge the writ to be good and well brought, they shall reverse the judgment of the inferiour court, and award to the appellant his full costs at both courts; and the next session of the inferiour court holden for the same county shall proceed to trial of the merit of the cause upon the same writ without any delay, a new entry thereof being made. All pleas in bar or abatement to be made originally in the inferiour court. Upon reversal of judgment in bar or abatement, the cause to be sent down to the inferiour court.

And all goods and estate attached, and sureties or bail given, shall continue and be alike responsible in manner as is by law provided, to satisfy the principal judgment upon such trial, as if no intermediate judgment had been rendered or given; and the same rule and method of proceeding to be observed in appeals to be made from the judgment in bar or abatement given by any justice of the peace to the inferiour court of common pleas, any law, usage or custom to the contrary notwithstanding. Goods, estate and bail to stand good. The like rule for appeals from a justice.

Saving always, that in suits wherein the queen is concerned, upon the superiour court's reversal of any judgment given in bar or abatement, the said court shall proceed to try the cause. Saving.

CHAPTER LXXIX.

AN ACT FOR REVIEW IN CIVIL CAUSES.

To the intent there be no failure of justice, and that the party against whom suit is brought be not foreclosed by a judgment given against him, when as upon a new trial he might be better provided of new and further evidence for his defence, which probably could not be obtained in so short time as by law is allowed for a trial by appeal,

Review of judgment given in the superiour or inferiour court.

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that it shall be in the liberty of the party aggrieved at the judgment given in any inferiour court of common pleas, or in the superiour court of judicature respectively, by new process to review the said cause once in each court.

Party reviewing to bring the case.

And the party bringing such action of review shall produce and present attested copies of the writ, judgment and of all the evidences on file in the former trial, and each party shall have the benefit of any new and further plea and evidence.

No review to be brought after three years.

Provided, no action of review shall be brought after the expiration of three years from the time of rendering the judgment, to be reviewed.

Saving.

Saving unto any infant, feme covert, or person non compos mentis, imprisoned, in captivity or out of this province the term of three years next after their coming of full age, or such imperfection removed, to bring his or her action of review, and not afterward.

Execution not to be staid by reason of review.

SECT. 2. And it is further enacted, that execution shall not be stayed or suspended, for or by reason of any process of review, any law, usage or custom to the contrary notwithstanding.

CHAPTER LXXX.

AN ACT RELATING TO ATTORNEYS.

Be it enacted by the lieutenant governour, council and representatives, in general court assembled, and by the authority of the same, that the plaintiff or defendant in any suit may plead or defend his cause by himself in his proper person, or with the assistance of such other person as he shall procure.

And be it further enacted, that all attorneys, commonly practising in any of the courts of justice within this province, shall be under oath, which oath shall be administered to them by the clerk in open court before the justices of the same at the time of their being admitted to such practice, in the tenor following, that is to say:

You shall do no falsehood, nor consent to any to be done in the court, and if you know of any to be done you shall give knowledge thereof to the justices of the court, or some of them, that it may be reformed. You shall not wittingly and willingly, promote, sue or procure to be sued any false or unlawful suit, nor give aid or consent to the same. You shall delay no man for lucre or malice; but you shall use yourself in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity as well to the court as to your clients. So help you God. Attorney's oath.

And the fee to be allowed for an attorney in the superiour court of judicature shall be twelve shillings, and in the inferiour court of common pleas, ten shillings, and no more, and but one attorney to be paid for in any case. And none but such as are allowed and sworn attorneys as aforesaid shall have any fee taxed for them in bills of cost; any law, usage or custom to the contrary in any wise notwithstanding. Fee.

CHAPTER LXXXI.

AN ACT PRESCRIBING THE FORM OF A WARRANT FOR COLLECTING OF TOWN ASSESSMENTS, &c.

SECT. 1. BE it enacted and ordained by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that the warrant to be issued by the selectmen or assessors of the respective towns, for the collecting and gathering in of town rates or assessments, shall be made in the form or tenor following, that is to say:

S—— ss. To the constable or constables of the town of A. within the county of S. and every of them, Greeting:

In his majesty's name you are required to levy and collect of the several persons named in the list herewith committed unto you, each one his respective proportion (therein set down) of the sum total of such list, being a tax or assessment granted and agreed upon by the inhabitants of the said town of A. regularly assembled, for defraying of the necessary charges arising within the same, and to deliver and pay in the sum and sums which you shall so levy and collect unto A. B. treasurer of the said town, where any such is appointed, or to the selectmen, or to C. D. who is by them appointed to receive the same, and to complete and make up an account of your collections of the whole sum, at, on or before the day of and if any person or persons shall neglect or refuse to make payment of the sum or sums, whereat he or they are respectively assessed and set in the said list, to distrain the goods or chattels of such person or persons to the value thereof, and the distress or distresses so taken to keep by the space of four days, at the cost and charge of the owner, and if the owner do not pay the sum or sums of money so assessed upon him within the said four days, then the said distress or distresses so taken you are to expose and openly sell at an out-cry, for payment of the said money and charges, notice of such sale being posted up in some publick place within the same town, twenty-four hours before hand, and the overplus coming by the said sale (if any be) besides the sum or sums of the assessment and the charges of taking and keeping of the distress and distresses, to be immediately restored to the owner, and for want of goods or chattels whereon to make distress, you are to seize the body or bodies of the person or persons so refusing, and him or them commit unto the common gaol of the said county, there to remain until he or they pay and

satisfy the several sum or sums whereat they are respectively assessed as aforesaid, unless upon application made to the court of general sessions of the peace, the same or any part thereof shall be abated. Dated at A. the day of in the year of his majesty's reign, annoque domini,

SECT. 2. And be it further enacted by the authority aforesaid, that when the officer appointed for collecting any rates or assessments, by virtue of such warrant as aforesaid, shall seize the body of any person or persons for want of goods or chattels whereof to make distress, and shall commit him or them to prison, he shall give an attested copy of his warrant unto the keeper of the prison, and thereupon certify under his hand the sum or sums such person or persons are to pay as their proportion to the assessment, and that for want of goods or chattels whereon to make distress, he has seized his or their bodies; and such attested copy, with the certificate thereon under the hand of the officer, shall be a sufficient warrant to require the prison keeper to receive and hold such person or persons in custody, until he or they shall pay their rates or assessments as aforesaid, and charges of imprisonment, with one shilling for the copy of the warrant.

Attested copy of the warrant to be given up on commitment.

CHAPTER LXXXII.

AN ACT IN ADDITION TO AN ACT FOR THE SETTLEMENT AND SUPPORT OF SCHOOLS AND SCHOOLMASTERS.

WHEREAS it is by law appointed, "that every town within this province, having the number of fifty householders or upwards, shall be constantly provided of a schoolmaster, to teach children and youth to read and write, and where any town or towns have the number of one hundred families or householders, there shall also be a grammar school set up in every such town, and some discreet person of good conversation, well instructed in the tongues, procured to keep such school, every such schoolmaster to be suitably encouraged and paid by the inhabitants," the observance of which wholesome and necessary law is shamefully neglected by divers towns, and the penalty thereof not required, tending greatly to the nourishment of ignorance and irreligion, whereof grievous complaint is made, for redress of the same,

Be it enacted and declared by the lieutenant governor, council and representatives, in general court assembled, and

Penalty for non-observance of the law.

by the authority of the same, that the penalty or forfeiture for non-observance of the said law shall henceforth be twenty pounds per annum, and so proportionably for a lesser time that any town shall be without such settled schoolmaster respectively, to be recovered, paid and employed in manner and to the use as by law is directed, any law, usage or custom to the contrary notwithstanding.

Grammar schoolmasters to be approved.

Every grammar schoolmaster to be approved by the minister of the town and the ministers of the two next adjacent towns, or any two of them, by certificate under their hands.

No minister to be a schoolmaster.

And be it further enacted, that no minister of any town shall be deemed, held or accepted to be the schoolmaster of such town within the intent of the law.

Justices to see to the observance of the law. Grand jurors to inquire and present breaches thereof.]

And the justices of peace in each respective county are hereby directed to take effectual care, that the laws respecting schools and schoolmasters be duly observed and put in execution. And all grand jurors within their respective counties shall diligently inquire and make presentment of all breaches and neglect of the said laws, that so due prosecution may be made against the offenders.

CHAPTER LXXXIII.

AN ACT IN ADDITION TO THE ACT FOR REGULATING THE MILITIA, AND FOR EXPLANATION OF A CLAUSE IN THE SAID ACT.

WHEREAS in the enumeration of persons exempted from trainings by the act, entitled an act for regulating of the militia, persons lame or otherwise disabled in body, producing certificate from two able chirurgeons, are included, and whereas divers persons fit and able for service, by corrupt and fallacious means, do obtain such certificates from some practitioners in chirurgery in elusion of the law, and contrary to the true intent and meaning thereof, and thereupon presume to neglect their duty, and plead an exemption with disregard to their officers, having no orderly dismission from them, for remedy whereof,

Lame persons &c. not to be dismissed from training, &c.

Be it enacted and declared by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that no person or persons whatsoever shall at any time hereafter, by virtue of any certificate already given, or to be given by two chirurgeons as aforesaid, be excused or exempted from bearing arms,

and attending trainings, and other military exercises and duty in the troop or company whereto they respectively belong, and are enlisted, or from impresses for her majesty's service, unless for just cause they first obtain an orderly dismission under the hands of the commission officers of such troop or company, and in case they unreasonably refuse the same, then of the first field officer of the regiment whereof such troop or company is part, or of the captain general or commander in chief for the time being, any law, usage or custom to the contrary notwithstanding.

without approbation of their officers.

CHAPTER LXXXIV.

AN ACT MORE EFFECTUALLY PROVIDING FOR THE SUPPORT OF MINISTERS.

WHEREAS in some few towns and districts within this province divers of the inhabitants are quakers, and others irreligious persons, averse and opposite to the publick worship of God, and to a learned orthodox ministry, and find out ways to elude the laws provided for the support of such, and prevent the good intentions thereof, to the encouragement of irreligion and profaneness,

For remedy whereof, and in further addition to the act, entitled an act for the settlement and support of ministers and schoolmasters, made in the fourth year of the reign of king William and queen Mary, and the additions thereto heretofore made,

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often, from time to time, as information or complaint shall be made to the court of general sessions of the peace in any county, that the minister of any town or district within such county, qualified as abovesaid, is not suitably encouraged, supported or maintained, according to his contract or agreement made with the inhabitants, or according to the allowance and maintenance ordered him by the court of general sessions of the peace, as the law directs where there is no such contract, or that the same happen to be expired, by reason that the selectmen or other assessors of such town or district do refuse or neglect to assess and raise such maintenance, and cause the same to be levied upon the inhabitants, or that payment thereof is withheld from the minister, in every

Court of general sessions' power to appoint assessors.

such case the said court is hereby directed and further empowered, over and above the imposing of the fine by law set upon such delinquent selectmen or assessors, to appoint three or more sufficient freeholders within the same county, to assess and apportion the sum agreed or set for the yearly support and maintenance of such minister, either by contract or court order, upon the inhabitants of such town or district, in manner as is directed for the raising other publick charges, and to present the list of such assessment unto two justices of the peace of the same county, quorum unus, who are hereby empowered and required to make out and affix a warrant thereto, directed to the constables of such town or district, in form as is by law prescribed for the levying and collecting of town rates or assessments, mutatis mutandis, requiring them to collect and levy the sum total of the said list, and pay in the same unto the minister or to such person as shall be appointed by the sessions to receive the same to his use, and such constables failing of a due observance and execution of such warrant shall incur the like pains, penalties and forfeitures, as for not collecting and paying in any other rates or assessments to them committed. And the court of general sessions of the peace is further directed and empowered to order meet satisfaction to be made unto the assessors so appointed, for their pains and trouble, out of the fines set upon the delinquent selectmen or assessors as aforesaid; and the remainder of the said fines, if any be, to be paid to the county treasurer for defraying the necessary charges of the county, any law, usage or custom to the contrary in any wise notwithstanding.

Two justices to make out a warrant for collecting.

Satisfaction to be given to the assessors.

Inhabitants of districts, their power.

SECT. 2. And be it further enacted by the authority aforesaid, that the inhabitants of each district or precinct respectively, regularly set off from any town, shall be, and are hereby empowered to name and appoint a clerk, as of right towns by law have, as also assessors for the assessing and raising a maintenance and support for the minister of such district or precinct, and to make out a warrant in form as by law prescribed for town rates or assessments, directed to the constable of the town or district, for the collecting and levying of the same, who is required to execute such warrant accordingly. And in case the assessors so appointed shall refuse or neglect that service, the selectmen of the town from whence such district or precinct was set off shall and are hereby required to assess the inhabitants of the same the sum agreed upon or set for maintenance of the minister thereof.

CHAPTER LXXXV.

AN ACT FOR APPOINTING COMMISSIONERS OF SEWERS.

WHEREAS great quantities of meadows and low grounds, belonging to sundry persons in several towns, are spoiled by the overflowing of rivers, brooks and waters occasioned by banks and stoppages in their courses, which by industry may be removed, to the benefit and profit of the owners, and also much meadow and pasture lands might be gained out of swamps and other rough and unprofitable grounds, by drowning and draining the same,

To the intent therefore that the owners of such lands and meadows may be encouraged and enabled to remove such obstructions as occasion such overflows, and to dam and flow their swamps and other grounds, and thereby bring them to meadow or pasture, that they may be made profitable to them,

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that it shall be in the power of the governor and council, from time to time, upon request to them made by the major part of the proprietors of any such lands, to grant commissioners of sewers to such and so many able and discreet persons, as to them shall seem meet, for the clearing and removing of the banks and obstructions of the passages of the waters in rivers, brooks or ponds, that occasion the overflows and drowning of meadows and low lands, and also for the damming and flowing of swamps and other unprofitable grounds, and draining of them, by which commissions the said commissioners shall be empowered to meet and convene together from time to time, as occasion may require, to view, consider, consult and contrive such ways and methods for the clearing and removing the obstructions aforesaid, and for the drowning and draining of swamps and other unprofitable grounds, and to employ workmen and labourers for such reasonable wages as may be agreed on for the effecting the premises, and from time to time to assess and tax all such persons as may or shall be owners of such overflowed lands or meadows, or such unprofitable swamps and lands as aforesaid, towards the charge thereof, having regard to each person's quantity of land and benefits to be received thereby, as equally according to their best judgment as they can, and also to appoint and swear a collector or collectors, for the collecting and gathering and paying in the same to such persons, as by the said commissioners shall be appointed to receive it, with

Governor and council to grant commissions of sewers.

powers to distrain all such persons as shall neglect or refuse to make payment of his, her or their parts or proportion set and assessed as aforesaid, in such manner as in the province rates and taxes by law may be done, and to call before themselves the said collector or collectors to account for his or their betrustments, with reference to the premises.

Commissioner's power.

SECT. 2. And further be it enacted by the authority aforesaid, that the said commissioners shall be sworn for the faithful discharge of their trust, and shall receive such salaries out of the said assessments, for their time and expenses touching the premises, as the governor and council shall appoint, unto whom the said commissioners shall be accountable when they shall be thereunto required.

Commissioners to be sworn.

SECT. 3. And be it further enacted by the authority aforesaid, that in case it shall so happen that any proprietor of any such lands or meadows, to be drowned or drained as aforesaid, shall be unable, or otherwise neglect to pay his, her, or their part or proportion of the said rates or assessments, it shall and may be lawful to and for the other proprietors concerned therein to pay the said assessment, and to hold the said lands and meadows so long until the rates and profits to be received of those lands may reimburse them, and the commissioners aforesaid shall determine the time how long.

Provided always, that it shall be in the liberty of any person aggrieved at any procedure had or made by the said commissioners, or any others in pursuance of this act, to appeal therefrom unto the governor and council for relief.

CHAPTER LXXXVI.

AN ACT IN ADDITION TO THE ACT FOR PROVIDING OF POUNDS, &c.

WHEREAS it often happens that the owners of cattle, sheep, or swine impounded, notwithstanding due notice thereof given them, neglect to compound or make satisfaction for the trespass and damage done, but suffer their creatures to lie long time in pound, to the augmenting of charge, and otherwise proving inconvenient,

For remedy whereof,

Be it declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that if the owner of any neat

cattle, horses, sheep or swine impounded, being duly notified thereof, shall not within the space of forty-eight hours, next after such notice given, replevy his creatures or otherwise orderly obtain their release, the party trespassed upon, making application to a justice of the peace within the same county for a warrant of appraisement, such justice is hereby directed and empowered to make out a warrant to two or more sufficient indifferent persons, and to administer an oath unto them, to make a due and equal appraisement and estimate of the value of such creatures, or so many of them as shall be sufficient to answer the damage, and all charges, and the party damnified may retain and keep the creatures so appraised to his own use, to make sale of them at his pleasure rendering the overplus of the appraised value (if any be) to the owner.

Justice of the peace to make out a warrant of appraisement.

The impounder to make sale, or retain to his own use.

CHAPTER LXXXVII.

AN ACT RELATING TO EXECUTORS AND ADMINISTRATORS.

For the better preventing of executors or administrators doing of wrong or falsifying of the trust in them reposed,

Sect. 1. Be it declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that henceforth every executor named in any will, taking upon him that charge by proving of such will, within the space of three months next after probate thereof, or at such further and longer time as the judge of probate shall see meet to allow, the circumstances of any estate requiring the same, shall exhibit into the register's office upon oath a full and true inventory of the whole estate of the deceased, so far as is then come to his hands and knowledge, and shall add thereto what and so much as may further afterwards appear, or otherwise shall give bond with one or more sufficient sureties, to pay the debts and legacies of the testator, on pain of forfeiting five pounds per month for every month's neglect thereof, afterward, as is by law provided for not presenting of a will, and to be recovered in like manner.

Executors to exhibit an inventory, or give bond.

Penalty for neglect.

Provided nevertheless, that in wills, where after the payment of debts, and of any certain particular legacy or legacies, the residue or remainder of the estate is bequeathed generally to any one or more persons, other than the executors themselves, in every such case an inventory of the estate shall be presented upon oath as aforesaid, and no bond

No bond to be accepted where the estate is bequeathed in general.

be accepted in lieu thereof, and the executors shall be liable to account as administrators are by law obliged to do.

Executor being residuary legatary may sue his co-executor.

And any executor, being a residuary legatary, may bring his action of account against his co-executor or executors of the estate of the testator in their hands, and may also sue for and recover his equal and rateable part thereof. And any other residuary legatary shall have like remedy against the executors.

Writs of attachment, &c. not to go against the body of the executor or administrator.

SECT. 2. And be it further enacted by the authority aforesaid, that all writs of attachment and execution shall run only against the goods or estate of the party deceased, in the hands of his executor or administrator, and not against their bodies, nor shall any executor or administrator be held to special bail upon mean process, nor his own proper goods or estate be seized, or his person be arrested or taken in execution for the debts or legacies of the testator or intestate, but upon suggestion of a waste, and return made by the sheriff nulla bona, or devastavit.

Scire facias to be granted on suggestion of waste.

In which case, a scire facias shall be issued out of the clerk's office of the same court against such executor or administrator, and scire feci being returned, if the executor or administrator shall make default of appearance, or coming in, shall not shew sufficient cause to the contrary, execution shall be adjudged and awarded against him of his own proper goods and estate, to the value of such waste, where it can be ascertained, otherwise for the whole sum recovered, and for want of goods or estate, against his body.

Executors and administrators to make payment in specie.

SECT. 3. And be it further enacted and declared, that every executor or administrator shall make payment of the debts and legacies of the testator or intestate, in specie, if such he hath as assets in his hands; and if he hath not the same in kind, he shall expose the estate to the creditor or legatary, to take his satisfaction thereof at his election, at a due and equal rate and value by appraisers then to be indifferently named and sworn. And where judgment and execution shall be awarded for any debt or legacy to be paid in money, and the executor or administrator hath not money of the testator or intestate as assets in his hands, the sheriff shall levy the goods or estate of the deceased, and expose the same to a publick and open sale for money, at the best rate and value that he can, and thereout pay such debt or legacy, and his own ees, with the necessary reasonable charges arising on the sale, and return the overplus (if any be) to the executor or administrator, or else shall pay and satisfy the creditor or legatary out of the goods or estate levied, if he see cause to accept the same, at the value in money, upon a due and equal appraisement made by sufficient persons upon their oaths, to be indifferently named and appointed for that purpose, any law, usage or custom to the contrary in any wise notwithstanding.

The estate to be exposed to sale.

CHAPTER LXXXVIII.

AN ACT IN ADDITION TO AND EXPLANATION OF THE ACT RELATING TO SURETIES UPON MESNE PROCESS IN CIVIL ACTIONS.

Principal to be rendered in court before judgment affirmed upon scire facias.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that upon special bail given in any civil action according as is set forth in the act, intitled an act relating to sureties upon mesne process in civil actions, it shall be lawful for the surety or sureties at any time or times before the judgment given in such cause be affirmed against such surety or sureties, upon a writ of scire facias brought, as by the said act is provided, to bring the principal into court, and move to be discharged; and the court upon such motion made shall order the principal to be taken into custody of the sheriff, who shall detain him by the space of thirty days, that so the creditor by that time may take his body in execution, if he think fit, and in case he be not served with execution before the expiration of the said thirty days, the sheriff at the end thereof shall release him, upon the payment of his prison charges; and the sureties from and after the rendering of the principal in court as aforesaid, and then paying to the creditor the cost he has been at for bringing forward his suit by scire facias, to be adjusted in court, shall be discharged from their suretiship in like manner as if they had rendered the principal in court at the time of entering up of the judgment, as is before provided, any law, usage or custom to the contrary notwithstanding.

Sureties discharged upon rendering the principal, and paying of costs.

For the more equal and impartial administration of justice,

No justice of either bench to be a judge or attorney in any case determin- [ed by him as justice of peace.

SECT 2. Be it declared and enacted, that no justice of the superiour or of any inferiour court of pleas within this province shall have a voice in judging or determining of any civil action which has before been heard and determined by him singly, as a justice of peace, and his judgment appealed from, nor shall he be admitted an attorney to plead or defend any such cause.

CHAPTER LXXXIX.

AN ACT TO PREVENT FRAUD IN CORD WOOD EXPOSED TO SALE.

Measure of a cord of wood.

BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that all cord wood exposed to sale shall be four feet long, accounting to half the carf, and the cord being well and close laid together shall measure eight feet in length and four feet in height.

Wood-corders to be appointed and sworn.

Fee.

And in every town and district within this province where wood is usually sold by the cord, the selectmen shall annually nominate and appoint some meet persons to be wood-corders, who shall be sworn in like manner as other town officers to the faithful discharge of their office, and shall diligently attend that service, and demand and receive three pence and no more per cord for all wood that shall be corded by them.

CHAPTER XC.

AN ACT AGAINST BURNING OF HOUSES.

Burning of houses declared to be felony.

BE it declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that if any person of the age of sixteen years and upwards shall willingly and maliciously, by day or night, burn the dwellinghouse of another, or other house parcel thereof, or any house built for publick use, any barn having corn, grain or hay therein, any mill, malt-house, store-house, shop or ship, the person so offending as aforesaid shall be deemed and adjudged to be a felon, and shall suffer the pains of death accordingly.

CHAPTER XCI.

AN ACT FOR THE BETTER SECURING THE PAYMENT OF PRISON CHARGES.

WHEREAS persons are oft times arrested and imprisoned for debt, or pretence thereof, not having wherewith to pay their prison charges, and the gaoler or prison keeper is constrained to feed and support them at his own charge, to his great loss,

For prevention whereof,

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that if any attorney, practitioner in the law, or others, shall cause any person to be arrested and imprisoned upon mesne process for debt or pretence thereof, and the prisoner be unable or have not wherewith to pay his prison charges, the person at whose suit he is committed, or his attorney or lawyer, that took out and caused such writ to be served, in case the principal be out of this province or government, shall stand charged for the prisoner's fees, diet, and other necessary charges, for so long time as he shall be held and detained in prison upon such process, no further prosecution being had thereon to a judgment in law, and be liable to the gaoler or prison keeper's action for the same, any law, usage or custom to the contrary notwithstanding.

Attorneys liable in case.

CHAPTER XCII.

AN ACT FOR A NEW CHOICE OF TOWN OFFICERS ON SPECIAL OCCASIONS.

BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when by reason of the non-acceptance, death or removal of any person or persons chosen to office in any town at the general annual meeting for the choice of town officers, there happens to be a vacancy or want of such officers, the town, being orderly assembled upon due warning given and notice of the occasion, may proceed to a new

Town officers may be chosen at any other meeting than that of March, in case.

choice of officers to supply and fill up such vacancy, at any other town meeting, the restriction of the choice of town officers by law to the month of March annually notwithstanding.

CHAPTER XCIII.

AN ACT FOR THE BETTER PREVENTING OF CRIMINALS AVOIDING OF JUSTICE.

Warrant, &c. out of the clerk of the peace office, to run through the province.

BE it declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that all warrants and summons in criminal matters issuing out of the clerk's office of the court of general sessions of the peace for any county, upon complaint, presentment or indictment lying before such court, shall run through the several counties within the province, and be duly executed by the officer or officers to whom they are directed, according to the tenor thereof, as is already by law provided for writs in civil causes.

CHAPTER XCIV.

AN ACT IN ADDITION TO THE ACT DIRECTING HOW RATES OR TAXES TO BE GRANTED BY THE GENERAL ASSEMBLY, SHALL BE ASSESSED AND COLLECTED.

WHEREAS the several towns within this province are by law empowered annually to choose assessors, distinct from the selectmen, for the assessing of the town's proportion of all publick taxes laid from time to time, by order of the general assembly,

Be it declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the assessors from time to time chosen in each town, distinct from the selectmen, shall be the assessors of such town's proportion also to the county and town charges, who shall likewise be under oath to the discharge of that trust, according to the rules

Assessors.

and directions in the law in that respect, and to be under the like penalty for not accepting and serving as is by law directed for the province tax.

And every town may choose a collector or collectors for the gathering of the county and town charges, if the inhabitants shall think fit, as the law provides for the province taxes, any law, usage or custom to the contrary notwithstanding. Collectors.

CHAPTER XCV.

AN ACT FOR ASCERTAINING THE RATES OF FOREIGN COINS IN HER MAJESTY'S PLANTATIONS IN AMERICA.

WHEREAS for remedying the inconveniences which had arisen from the different rates at which the same species of foreign silver coins did pass in her majesty's several colonies and plantations in America, her most excellent majesty has thought fit by her royal proclamation, bearing date the eighteenth day of June, one thousand seven hundred and four, and in the third year of her reign, to settle and ascertain the currency of foreign coins in her said colonies and plantations, in the manner and words following,

We having had under our consideration the different rates at which the same species of foreign coins do pass in our several colonies and plantations in America, and the inconveniences thereof, by the indirect practice of drawing the money from one plantation to another, to the great prejudice of the trade of our subjects; and being sensible, that the same cannot be otherwise remedied, than by reducing of all foreign coins to the same current rate within all our dominions in America; and the principal officers of our mint having laid before us a table of the value of the several foreign coins which usually pass in payments in our said plantations, according to their weight, and the assays made of them in our mint, thereby shewing the just proportion which each coin ought to have to the other, which is as followeth, viz. Sevill pieces of eight, old plate, seventeen penny weight twelve grains, four shillings and six pence; Sevill pieces of eight, new plate, fourteen penny weight, three shillings seven pence one farthing; Mexico pieces of eight, seventeen penny weight twelve grains, four shillings and six pence; Pillar pieces of eight, seventeen penny weight twelve grains, four shillings and six pence three farthings;

Peru pieces of eight, old plate, seventeen penny weight twelve grains, four shillings and five pence, or thereabouts; cross dollars, eighteen penny weight, four shillings and four pence three farthings; ducatoons of Flanders, twenty penny weight and twenty-one grains, five shillings and six pence; ecu's of France, or silver louis, seventeen penny weight twelve grains, four shillings and six pence; crusadoes of Portugal, eleven penny weight four grains, two shillings and ten pence one farthing; three gilder pieces of Holland, twenty penny weight and seven grains, five shillings and two pence one farthing; old rix dollars of the empire, eighteen penny weight and ten grains, four shillings and six pence, the halves, quarters and other parts in proportion to their denominations, and light pieces in proportion to their weight; we have therefore thought fit for remedying the said inconveniences, by the advice of our council, to publish and declare, that from and after the first day of January next ensuing the date hereof, no Sevill, Pillar, or Mexico pieces of eight, though of the full weight of seventeen penny weight and an half, shall be accounted, received, taken or paid within any of our said colonies or plantations, as well those under proprietors and charters, as under our immediate commission and government, at above the rate of six shillings per piece current money, for the discharge of any contracts or bargains to be made after the said first day of January next, the halves, quarters, and other lesser pieces of the same coins to be accounted, received, taken, or paid in the same proportion; and the currency of all pieces of eight of Peru, dollars, and other foreign species of silver coins, whether of the same, or baser alloy, shall, after the said first day of January next, stand regulated, according to their weight and fineness, according and in proportion to the rate before limited and set for the pieces of eight of Sevill, Pillar and Mexico; so that no foreign silver coin of any sort be permitted to exceed the same proportion upon any account whatsoever. And we do hereby require and command all our governors, lieutenant governors, magistrates, officers, and all other our good subjects within our said colonies and plantations, to observe and obey our directions herein, as they tender our displeasure.

And whereas, notwithstanding the said proclamation, the same indirect practices as are therein mentioned are still carried on within some of the said colonies or plantations, and the money thereby drawn from one plantation to another, in prejudice of the trade of her majesty's subjects, wherefore for the better enforcing the due execution of her majesty's said proclamation throughout all the said colonies and plantations, and for the more effectual remedying the said inconveniences thereby intended to be remedied,

Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the Lord's spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that if any person within any of the said colonies or plantations, as well those under proprietors and charters, as under her majesty's immediate commission and government, shall after the first day of May, which shall be in the year of our Lord, one thousand seven hundred and nine, for the discharge of any contracts or bargains to be thereafter made, account, receive, take or pay any of the several species of foreign silver coins, mentioned in the before recited proclamation, at any greater or higher rate than at which the same is thereby regulated, settled and allowed to be accounted, received, taken or paid, every such person so accounting, receiving, taking or paying the same, contrary to the directions therein contained, shall suffer six months imprisonment without bail or mainprize, any law, custom or usage in any of the said colonies or plantations to the contrary hereof, in any wise notwithstanding, and shall likewise forfeit the sum of ten pounds for every such offence, one moiety thereof to her majesty, her heirs and successors, the other moiety to such person or persons as shall sue for the same, to be recovered with full costs of suit, by action of debt, bill, plaint or information in any of her majesty's courts of justice, within any of the said plantations, or in any of the courts of justice of the charter or proprietary governments where such offence shall be committed.

Penalty for accounting, receiving, taking or paying any of the several species of foreign silver coins herein mentioned, at any greater or higher rate after the first of May, 1709.

Provided nevertheless, and it is hereby declared, that nothing in the before recited proclamation, or in this act contained, shall extend, or be construed to compel any person to receive any of the said species of foreign silver coins at the respective rates in the said proclamation mentioned.

Provided also, and it is hereby further declared, that nothing in this act contained shall extend or be construed to restrain her majesty from regulating and settling the several rates of the said species of foreign silver coins within any of the said colonies or plantations, in such other manner, and according to such other rates and proportions as her majesty by her royal proclamation for that purpose to be issued, shall from time to time judge proper and necessary, or from giving her royal assent to any law hereafter to be made in any of the said colonies or plantations, for the settling and ascertaining the current rates of such coins within the said colonies or plantations, but that such further regulations may be made and such assent given, in as full and ample manner to all intents and purposes, as the same might have been done in case this act had not been made and no otherwise; any thing herein before contained to the contrary hereof in any wise notwithstanding.

CHAPTER XCVI.

AN ACT FOR THE REGULATING OF FREE NEGROES, &c.

WHEREAS in the several towns and precincts within this province there are several free negroes and mulattoes, able of body, and fit for labour, who are not charged with trainings, watches, and other services required of her majesty's subjects, whereof they have share in the benefit,

Negroes, &c. to do service equivalent to trainings, &c.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the selectmen of each town or precinct be and hereby are empowered to order and require so many days work yearly of each free male negro, or mulatto, able of body, dwelling within such town or precinct, in repairing of the highways, cleansing the streets, or other service for the common benefit of the place, as at the discretion of the selectmen may be judged an equivalent to the services performed by others, as aforesaid.

And every negro or mulatto as aforesaid, being duly warned by the selectmen or other person appointed by them, that shall neglect or refuse to attend and perform the labour and service at the place and time, as he is directed, shall forfeit and pay to the use of the poor of such town or precinct five shillings per diem for each days neglect of his duty in that respect.

Penalty for neglect.

To attend in case of alarm.

SECT. 2. And be it further enacted, that all free male negroes or mulattoes, of the age of sixteen years and upwards, able of body, in case of alarm, shall make their appearance at the parade of the military company of the precinct wherein they dwell, and attend such service as the first commission officer of such company shall direct, during the time the company continues in arms, on pain of forfeiting the sum of twenty shillings to the use of the company, or performing eight days labour as aforesaid, without reasonable excuse made and accepted for not attending.

SECT. 3. And be it further enacted, that every free negro or mulatto who shall harbour or entertain any negro or mulatto servant in his or her house, without the leave and consent of their respective masters or mistresses, shall forfeit and pay the sum of five shillings to the use of the poor of the town, for each offence.

Not to harbour servants.

Punishment in case of not paying their fines.

And if any negro or mulatto as aforesaid shall be unable to pay his or her fine, or shall neglect or refuse to attend the labour assigned him as aforesaid, any of her majesty's justices, upon complaint thereof made, are hereby empowered to commit such delinquent to the house of correction,

there to receive the discipline of the house, and to be kept to hard labour double the number of days assigned him to work as aforesaid, or as is the sum of his or her fine, at the rate of one shilling per diem.

CHAPTER XCVII.

AN ACT IN ADDITION TO THE ACT FOR THE RELIEF OF IDIOTS AND DISTRACTED PERSONS.

WHEREAS in and by the act, intitled an act for the relief of idiots and distracted persons, made and passed sexto Gulielmi et Mariæ, the justices of the superiour court of judicature are directed and empowered to license and authorize the selectmen or overseers of the poor of the town or place whereto such impotent or distracted person belongs, or such others as the said justices shall think fit, to make sale of the housing and land of any such impotent or distracted person, the produce thereof upon sale to be secured, improved and employed to and for the use, relief and safety of such person as the justices shall direct, as long as the person shall live, or until he or she be restored to be of sound mind, and the overplus, if any be, to and for the use of the next and right heirs of such party, which uses being so restrained and limited, the just debts of the party, in case such there be, cannot be paid thereout, which exposes the estate to loss and charge of lawsuit for recovery thereof,

Be it therefore declared and enacted by his excelleney the governor, council and representatives, in general court assembled, and by the authority of the same, that the goods, chattels, housing and lands of any impotent or distracted person, or the produce thereof upon sale made by license and empowerment as aforesaid, be subject in the first place, and be accordingly so directed and applied to the payment of the just debts owing by such person, which were contracted before the time of his or her distraction; any restriction or limitation in the aforerecited act, law, usage or custom to the contrary notwithstanding.

Estate of persons distracted subject to the payment of their debts.

CHAPTER XCVIII.

AN ACT FOR THE UPHOLDING AND REGULATING OF MILLS.

WHEREAS frequently there are divers partners, owners of mills erected for the common use and benefit of the respective towns wherein they are, and oft times improved by the inhabitants of neighbouring towns, and forasmuch as by reason of disagreement, death or decay of some of the partners, or perplexity by entail on their descendants, mills sometimes fall to despair, and are rendered useless and unserviceable, if not totally demolished, to the hurt and detriment of the publick, as well as loss to the other partners, who stand ready to advance their parts of the charge for repairing, amending, or rebuilding of the same,

SECT. 1. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as it shall happen any mill or mills, mill dam, floodgates, sluices, running gear or appurtenances, to be demolished, broken, worn out, or stand in need of repair and amendment, it shall and may be lawful to and for any one or more of the partners, on knowledge thereof, to notify and summon a general meeting of the whole, at the said mill or mills, on a certain day and time, within fifteen days next after the issuing of such notification or summons, to consult and agree about the rebuilding or repairing of such mill or mills, or appurtenances, or defects therein, to make them serviceable.

Owners' meeting.

And if any partner being so notified shall neglect to attend such meeting, or being met shall refuse to agree with the major part of the interested for rebuilding, repairing, and fitting up of such mill or mills, so as to make them serviceable, or to pay his part of the cost and charge thereof, the rest of the partners, being the major part of the interested, may direct and cause the same to be done, and shall be reimbursed and paid such sum or sums as they or any of them shall advance and disburse thereon, over and above their own respective shares and proportion, with interest for the same in the interim, out of the said mill or mills, or the profits or earnings thereof; and it shall and may be lawful for them, and they are hereby empowered to demand, sue for, recover and receive the same accordingly; any law, usage or custom to the contrary notwithstanding.

Major part of the interested to direct.

Advance for any partner, how to be secured.

SECT. 2. And be it further enacted by the authority aforesaid, that every miller shall be provided of scales and

Toll.

weights to weigh corn to and from the mill, if desired; and the toll for grinding all sorts of grain shall be one sixteenth part and no more, any law, usage or custom to the contrary notwithstanding.

Provided, that nothing herein contained shall be construed to annul or make void any particular contract or contracts made or to be made respecting the repairs of any mill or mills. Saving.

CHAPTER XCIX.

AN ACT FOR REGULATING OF DRAINS AND COMMON SHORES:

For preventing of inconveniences and damages by frequent breaking up the highways, streets and lanes in towns, for the laying and repairing of drains or common shores, and of differences arising among partners in such drains or common shores, above their proportion of the charge for making or repairing the same,

Sect. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the twenty-fifth day of March, in the year of our Lord one thousand seven hundred and ten, no person may presume to dig or break up the ground in any highway, street or lane within any town for the laying, repairing or amending of any drain or common shore, without the approbation and consent of the selectmen, signified in writing under the hand of the town clerk, on pain of forfeiting twenty shillings, to the use of the poor of such town, to be levied by warrant from any one of her majesty's justices of the peace, and to make good all damages occasioned by such breach. Penalty for digging or breaking up the ground in any highway, street &c. without approbation.

Sect. 2. And be it further enacted, that all drains and common shores for the draining of cellars, hereafter to be made or repaired in any streets or highways, shall be substantially done with brick or stone, in such manner as the selectmen of the town shall direct. Drains and common shores to be regulated by the selectmen.

And that it shall and may be lawful to and for any one or more of the inhabitants of any town, at his or their own cost and charge, to make and lay a common shore or main drain for the benefit of themselves and others that shall think fit to join therein, and every person that shall afterwards enter his or her particular drain into such common shore or main drain, or by any more remote means receive benefit thereby, for the draining of their cellars or lands, shall be obliged to pay unto the owner or owners of such Liberty to lay a main drain or common shore. Persons receiving benefit thereby, to pay to-

wards the charge, at the judgment of the selectmen.

common shore or main drain a proportionable part of the charge of making or repairing the same, or so much thereof as shall be below the place where any particular drain joins or enters thereinto, at the judgment of the selectmen of the town, or major part of them.

Appeal.

Saving a right of appeal to the court of general sessions of the peace to the party aggrieved at any such determination.

Contracts saved.

Provided, this act shall not extend to the altering of any particular agreement or contract made betwixt persons interested in any drain or common shore.

CHAPTER C.

AN ACT IN ADDITION TO, AND FOR EXPLANATION OF THE ACT FOR THE SETTLING AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

Brothers and sisters of any person deceased intestate, without wife or children, to be sharers with the mother.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that if, after the death of a father, any of his children shall die intestate, without wife or children, in the life time of the mother, every brother and sister, and the representatives of them, shall have an equal share with her in the estate of the intestate, any thing in the aforesaid act for the settling and distribution of the estates of intestates to the contrary thereof in any wise notwithstanding.

Allowance to widows.

SECT. 2. And be it further enacted by the authority aforesaid, that every judge of probate, in making up and passing the accounts of administration of the estates of persons deceased, be, and is hereby directed to have consideration, and make allowance of necessary bedding, utensils and implements of household, necessary for the upholding of life, to the use of the wife and family of the deceased, where provision is not made for the wife in that respect by will. And such necessary bedding, utensils and implements of household, shall not be accounted assets in the hands of the executor or administrator, nor subject to the payment of debts, although the estate prove insolvent, as they could not have been levied or distrained for debt in the parties' life time; any law, usage or custom to the contrary notwithstanding.

CHAPTER CI.

AN ACT IN ADDITION TO AN ACT TO PREVENT FRAUD IN CORD WOOD, &c.

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the selectmen, in every town where corders of wood are chosen, shall from time to time, as there shall be occasion, appoint the fees for cording wood, any law, usage or custom to the contrary notwithstanding.

Selectmen to appoint the fee of wood-corders.

CHAPTER CII.

AN ACT DIRECTING THE LEVYING AND COLLECTING OF COUNTY AND TOWN ASSESSMENTS.

Whereas the act, intitled an act for regulating of townships, choice of town officers, and setting forth their power, made and passed in the fourth year of the reign of king William and queen Mary, directs and restrains the collecting and gathering of all rates and assessments, for county and town charges respectively, to the constables of the towns wherein they are levied, which in some towns is attended with several inconveniences, for remedy whereof,

Sect. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that it shall and may be lawful to and for the freeholders and inhabitants of each town, district or precinct within this province, orderly set off and established annually from time to time, to elect and appoint a collector or collectors distinct from the constable or constables, for the gathering of all rates and assessments, from time to time duly assessed and levied within such town or district, to and for county charges, and to all charges of every kind whatsoever, enumerated in the aforesaid act of townships, arising within the same town, district or precinct, for any use or uses, services, dues or payments, there to be made and done.

Towns and precints allowed to choose collectors.

No county or town rates to be gathered, but by a constable or collector.

And all such rates or assessments shall be demanded, paid to and received by a constable or collector to whom the same shall be committed to gather with a warrant from the selectmen or assessors under their hands, in form as by law prescribed, and by no other person or persons; any law, usage or custom to the contrary in any wise notwithstanding.

Collectors and constables to make payment as directed.

And every collector or constable to whom any such rates or assessments shall be committed, with a warrant as aforesaid, shall levy, gather and receive the same, according to the direction in the warrant to him given, and shall account for all his receipts, and make payment of what and so much as he shall levy and gather of the several rates and assessments, committed to him as aforesaid, to the county or town treasurers respectively, or other receiver as by his warrant he shall be required, in manner and time as is by law provided, and be subject to the pains and penalties therein contained, in case of neglect either of collecting or paying.

County treasurer's power. His accounts to be laid before the general assembly, in May session annually.

SECT. 2. Be it enacted by the authority aforesaid, that the treasurer of each county respectively be empowered to draw in and enforce the payment of all county charges ordered by the court of general sessions of the peace, by all such rules and methods prescribed by law to enable the treasurer and receiver general to gather in the province taxes, and shall from time to time lay before the general assembly at their anniversary session in May an account of all money that has been raised in his respective county, or by any means received by him as county treasurer the year past, what each town paid towards it, and how the same has been employed or disposed of; and no further assessment shall be levied until the said account has been offered to the general court as aforesaid, and allowed by them.

CHAPTER CIII.

AN ACT FOR SUPPRESSING OF ROBBERIES AND ASSAULTS.

To the intent her majesty's liege people may be in peace and out of fear of being assaulted and robbed by ill-minded wicked ruffians, as they are travelling the common roads or highways, or of being insulted and indecently treated or abused as they are civilly walking and recreating themselves in the fields, streets or lanes in towns,

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that every person and persons that shall be convicted of assaulting and robbing, and taking away from the person of another travelling the common road or highway any money, goods, clothing, or other things whatsoever, shall be punished with burning in the forehead or hand, suffer six months imprisonment, and render treble damages to the party robbed. Robbing on the highway.

And upon a second conviction of the like offence, shall be deemed a felon, and suffer the pains of death as in cases of felony. Second conviction.

SECT. 2. And be it further enacted by the authority aforesaid, that whosoever shall be convicted of assaulting or offering any insolence or violence to any woman or mankind, in the fields, streets or lanes in any town, or of despoiling them, damnifying or defacing any of their attire or ornaments, or attempting the same, shall be punished by being publickly whipped not exceeding ten stripes, or by being committed to the house of correction to receive the discipline of the house, and continue there by the space of thirty days, and kept according to the rules and orders of the house, and also find sureties for the good behaviour before he be discharged; and any two justices of the peace, quorum unus, in the vacancy of the court of general sessions of the peace, are empowered to hear and determine this offence. Assaulting of women.

And if the party so offending shall afterwards be convicted of committing the like offence a second time, he shall be further punished with burning in the hand, by sentence of the court of general sessions of the peace. Second conviction.

SECT. 3. And it is further enacted, that in either of the offences aforesaid, the oath of the party assaulted or robbed, being of reputation, shall be received as one sufficient evidence towards convicting the person charged. Party's oath.

CHAPTER CIV.

AN ACT PROVIDING IN CASE OF FIRE FOR THE MORE SPEEDY EXTINGUISHMENT THEREOF, AND FOR THE PRESERVING OF GOODS ENDANGERED THEREBY.

WHEREAS, by reason of the contiguity and adjoining of the houses and dwellings within the town of Boston, persons

are under great affrightment and hurry upon the breaking out of fire, and not only the person in whose house the fire first breaks out, but the neighbourhood, are concerned to employ their utmost diligence and application to extinguish the fire and prevent the progress thereof, and to preserve their substance by the removal of their goods, being glad of the assistance of others in that regard, and divers evil-minded and wicked persons, on pretence of charitably offering their help, taking advantage of such confusion and calamities to rob, plunder, embezzle, convey away and conceal the goods and effects of their distressed neighbours,

For preventing whereof,

Firewards.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that it shall and may be lawful to and for the justices of the peace and selectmen of the town of Boston from time to time to appoint such number of prudent persons of known fidelity, not exceeding ten, in the several parts of the town, as they may think fit, who shall be denominated and called firewards, and have a proper badge assigned to distinguish them in their office, viz. a staff of five feet in length, coloured red, and headed with a bright brass spire of six inches long, and at times of the breaking forth of fire, and during the continuance thereof, shall, and hereby are fully authorized and empowered to command and require assistance for the extinguishing and putting out the fire, and for removing of household stuff and furniture, goods and merchandizes, out of any dwellinghouses, storehouses, or other buildings actually on fire, or in danger thereof, and guards to secure and take care of the same, as also to require assistance for the pulling down or blowing up of any houses, or any other service relating thereto, by the direction of two or three of the chief civil or military officers of the town, as is by law provided, to stop and prevent the further spreading of the fire, and to suppress all tumults and disorder.

Badge of their office.

Power.

Pulling down or blowing up houses.

Assistance to be given them.

And the officers from time to time appointed as aforesaid are required upon the notice of fire breaking forth, taking their badge with them, immediately to repair to the place, and vigorously to exert their authority for the requiring of assistance, and using utmost endeavours to extinguish or prevent the spreading of the fire, and to preserve and secure the estate of the inhabitants; and due obedience is required to be yielded to them and each of them accordingly for that service.

Penalty for neglect.

And all disobedience, neglect or refusal in any, shall be informed of to some of her majesty's justices of the peace within two days next after, and the offenders therein, upon conviction thereof, before any two justices, quorum unus, shall forfeit and pay the sum of forty shillings each, to be

levied and distributed by the discretion of the selectmen amongst the poor most distressed by the fire, and in case the offender or offenders are unable to satisfy the fine, then to suffer ten days imprisonment.

Penalty on such as shall conceal, rob, or embezzle goods saved out of the fire.

SECT. 2. And be it further enacted by the authority aforesaid, that if any evil minded wicked persons shall take advantage of such calamity, to rob, plunder, purloin, embezzle, convey away, or conceal any goods, merchandizes or effects of the distressed inhabitants whose houses are on fire, or endangered thereby and put upon removing their goods, and shall not restore and give notice thereof to the owner or owners, if known, or bring them into such publick place as shall be appointed and assigned by the governor and council, within the space of two days next after proclamation made for that purpose, the person or persons so offending, and being thereof convicted, shall be deemed thieves and suffer the utmost severities of the pains and penalties by law provided against such.

CHAPTER CV.

AN ACT AGAINST INTEMPERANCE, IMMORALITY AND PROFANENESS, AND FOR REFORMATION OF MANNERS.

WHEREAS the laws at several times established by the government of this her majesty's province of the Massachusetts bay, and now in force, have made good and wholesome provision for the regulation of inns, taverns, ale-houses, victuallers, and other houses for common entertainment, and retailers of strong liquors out of doors, and for preventing of tippling and drunkenness, declaring that such licensed houses ought to be improved to the right ends and uses for which they are designed, namely, for the receiving, refreshment and entertainment of travellers and strangers, and to serve the publick occasions of the towns, and place in which they are, and not to be nurseries of vice and debauchery, as is too frequently practised by some, to the hurt of many persons, by mispending their time and money in such houses, to the ruin of families,

And have also made good and wholesome provision against immoralities, vice, and profaneness,

SECT. 1. Be it therefore enacted and declared by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same,

Laws to be read in the town meeting.

that the laws against drunkenness, profaneness, and other immoralities, together with this act, be solemnly read by the town clerk, in each town, at their anniversary town meeting in March, from time to time.

Direction to see that the laws be observed.

And all justices, sheriffs, grand jurors, tithingmen, constables, or other officers whom it doth concern, are hereby strictly enjoined and required to exert their utmost zeal and vigour in seeing that the said several laws be duly observed and kept, and that the violators thereof be duly prosecuted and punished in manner as by the said laws is directed and provided; and the selectmen and other principal well disposed persons in each town, desirous of a reformation, are hereby exhorted and directed to countenance, accompany, assist and join with the justices, sheriffs, tithingmen, constables, and other officers, in their endeavours to discover and suppress all unlicensed houses, and vice, immorality, and profaneness.

And for reclaiming the over great number of licensed houses, many of which are chiefly used for revelling and tippling, and become nurseries of intemperance and debauchery, indulged by the masters or keepers of the same, for the sake of gain,

A list of the names of persons licensed to be transmitted to the selectmen.

SECT. 2. Be it enacted by the authority aforesaid, that the clerk of the peace in the respective counties from time to time, annually, before the granting of licenses, do transmit to the selectmen of every town within the county, a list of the names of the persons in such town, that were licensed the year before, and that licenses be renewed to none of them that the selectmen shall except to as unfit to hold and exercise such an employment by reason of their not keeping good rule and order in their houses, not being suitably accommodated and provided for the entertainment of strangers and travellers as the law directs, or not of sober conversation.

And no person shall have his license renewed, until he produces a certificate to the justices of quarter sessions, that such list has been transmitted to the selectmen, and considered by them.

None to be firstly licensed but upon the recommendation of the selectmen.

And that no time or times hereafter any person or persons shall be firstly or originally licensed to be a victualler, innholder, taverner, or seller of wine, beer, ale, cyder or strong drink or spirits by retail, other than such who shall produce certificate from the selectmen of the town where they dwell, recommending them to be persons of sober conversation, suitably qualified and provided for the exercise of such an employment; and that no license be renewed from time to time, to any person heretofore licensed, against whom any presentment, complaint or information shall be made, for misrule or disorder in such house, or for not being suitably provided, as the law in such case requires, to entertain strangers and travellers at bed and board, before the matter informed and complained of be inquired into and judged

Licenses not to be renewed until complaints be heard and judged of.

of. Provided such presentment or complaint be prosecuted to effect, in the same court for granting of licenses.

Licensed persons not suitably provided, to be deprived.

And if any common victualler, innholder or taverner, enjoined by law to be suitably provided to receive and entertain strangers, travellers, or others, as occasion may require, shall be convicted of refusing to make suitable provision, when desired, for the receiving of strangers, travellers, and their horses, or for any publick entertainment, such person shall be deprived of his license; and any three or more of the justices of the court of general sessions of the peace, quorum unus, are hereby empowered and directed, by warrant under their hands and seals, directed to the sheriff or his deputy, to cause his sign to be taken down.

Town dwellers prohibited drinking in publick houses after nine at night.

Sect. 3. And be it further enacted by the authority aforesaid, that no town dweller, or inhabitant in any town, shall upon any pretence whatsoever be drinking or tippling in any tavern, or other publick licensed house, or in any of the dependencies thereof, after nine o'clock in the night, under the penalty of twenty shillings, to be paid by the master or keeper of such house, for his entertaining of them, and one shilling to be paid by each person so offending.

Singing, musick and dancing forbidden in publick houses.

That no singing, fiddling, piping, or any other musick, dancing, or revelling shall be suffered or exercised, in any tavern, or other publick licensed house, on penalty of ten shillings, to be paid by the master or keeper of the said house, as shall suffer the same, and five shillings by each person offending in any of the said particulars.

That there be two tithingmen annually chosen within each military division within the town of Boston, whose particular and especial care and charge it shall be to inspect that their part of the town.

Common drunkards to be posted up at retailers.

That common drunkards be posted up at the houses of retailers of wine and liquors out of doors. as the law directs to publick licensed houses, with a prohibition to them of selling drink to any such.

Penalty for selling without license.

Sect. 4. And be it further enacted by the authority aforesaid, that if any person or persons shall presume to keep a tavern, inn, or house of common entertainment, or to sell by retail wine, beer, ale, cyder or any strong drink or spirits, without license first orderly had and obtained for the same as the law directs, such person or persons, upon conviction or confession thereof before one or more of her majesty's justices of the peace, shall forfeit and pay the sum of six pounds for every such offence, the one moiety thereof to be to the informer, and the other moiety to the use of the poor of the town where the offence shall be committed.

And for the better discovery and finding out persons that shall presume to transgress against this act, or any other of the laws made against vice, profaneness and immorality.

Selectmen to appoint persons to be informers.

The selectmen in each respective town be, and are hereby empowered from time to time to choose and appoint one or more discreet persons to oversee and inform of any breach of the said laws, who shall have a meet and honourable recompense made them for their service out of the town treasury, as the selectmen shall think proper and suitable.

Rout or disturbance in the street in the night time.

Sect. 5. And be it further enacted, that no person or persons, either singly or together in company, shall presume to sing, dance, fiddle, pipe, or use any musical instruments in any of the streets, lanes or alleys within any town in the night time, or make any rout, or other disturbance to the disquiet and disrest of any of the inhabitants, under the penalty of five shillings for every person so offending in any of the particulars aforementioned, or being corporally punished by imprisonment, sitting in the stocks or cage.

And for the more religious observation of the Lord's day,

Playing and rudeness on the evening following the Lord's day forbidden.

Sect. 6. Be it enacted, that all persons who shall be found in the streets, wharves, fields, or other places within any town, on the evening following the Lord's day, disporting, playing, making a disturbance, or committing any rudeness, the persons so offending shall each of them pay a fine of five shillings, or suffer twelve hours imprisonment, or sit in the stocks not exceeding two hours; all fines and forfeitures arising by virtue of this act, or any paragraph thereof, and not herein before disposed of, shall be to and for the use of the poor of the town where the offence shall be committed, any law, usage or custom to the contrary notwithstanding.

Constables required to prevent profanation of the Lord's day in the time of publick worship.

And the constables of the respective towns are hereby directed and specially empowered to prevent the profanation of the Lord's day, by restraining persons from walking, recreating and disporting themselves in the streets, wharves, or fields, in the time of publick worship.

And forasmuch as the well educating and instructing of children and youth in families and schools are a necessary means to propagate religion and good manners, and the conversation and example of heads of families and schools having great influence on those under their care and government to an imitation thereof,

Keepers of schools to have the approbation of the selectmen.

Sect. 7. Be it enacted by the authority aforesaid, that no person or persons shall or may presume to set up or keep a school for the teaching and instructing of children or youth in reading, writing, or any other science, but such as are of sober and good conversation, and have the allowance and approbation of the selectmen of the town in which any such school is to be kept, grammar schoolmasters to have approbation as the law in such case already provides.

Watchmen and constables,

And if any person or persons, after publication of this act, shall be so hardy as to set up, or continue to keep any such

school without allowance and approbation as aforesaid, the person or persons so offending shall forfeit and pay the sum of forty shillings to the use of the poor of the town where such school shall be set up or continue to be kept contrary to this act, and so toties quoties as often as they shall be convicted, any law, usage or custom to the contrary notwithstanding. Penalty for setting up or keeping school without approbation.

And whereas evil communication, wicked, profane, impure, filthy and obscene songs, composures, writings or prints, do corrupt the mind, and are incentives to all manner of impieties and debaucheries, more especially when digested, composed or uttered in imitation or mockery of devotion or religious exercises,

SECT. 8. Be it further enacted by the authority aforesaid, that whosoever shall be convicted of composing, writing, printing or publishing of any filthy, obscene, or profane song, pamphlet, libel or mock sermon, in imitation or in mimicking of preaching, or any other part of divine worship, every person or persons offending in any of the particulars aforementioned, shall be punished by fine to her majesty not exceeding twenty pounds, or by standing on the pillory once or oftener, with an inscription of his crime in capital letters affixed over his head, according to the discretion of the justices in quarter sessions. Penalty for composing or publishing of profane songs or mock sermons.

CHAPTER CVI.

AN ACT FOR FURTHER REGULATING OF THE MILITIA.

WHEREAS in the fifth article of the act for regulating of the militia, among other things therein mentioned, "every listed soldier and other householder, except troopers, is to be provided with a good sword or cutlass, under the penalty in the said act mentioned," and whereas it is found by experience that bayonets are of more use, as well for offence as defence,

Be it therefore enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the twentieth day of June next, every person in the town of Boston, who is obliged by the aforesaid act to appear upon an alarm at the place of rendezvous, or where the chief officer doth appoint, (except troopers) shall be provided with a good goosenecked bayonet with socket fit to fix over the muzzle of his musket, under the like penalty as in the said act is mentioned for not being provided with a sword or cutlass. Soldiers to be provided of bayonets.

CHAPTER CVII.

AN ACT FOR EXPLANATION, AND IN ADDITION TO THE ACT FOR KEEPING OF WATCHES IN TOWNS, PASSED IN THE ELEVENTH YEAR OF THE REIGN OF KING WILLIAM THE THIRD.

WHEREAS provision is made in and by a paragraph or clause in the said act, that a watch may be kept in towns in other manner than a constable's watch, where the members of the council and justices of the peace together with the selectmen, and the selectmen by themselves, where no member of the council or justice dwells, shall judge it most for the benefit and safety thereof, the inhabitants also agreeing to support the charge,

Qualification of watchmen, and badge.

SECT. 1. Be it declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when from time to time a watch in other and different manner from a constable's watch shall be agreed upon and directed in any town, in manner as afore expressed, the number and qualification of the persons whereof it shall consist shall also be agreed upon as aforesaid, and one sober, discreet, able bodied householder appointed to take the charge and command thereof, and to see that the watchmen do their duty, who, as a badge of his office, shall carry a quarter pike with a spire on the top thereof, and every watchman shall carry a staff with a bill fastened thereon, as is usual,

Watchmen's power.

and the said officer and watchmen are hereby respectively empowered and authorized to prevent and suppress all disturbances, routs, unnecessary noises and disorders in the night, to examine all persons whom they shall find abroad after ten o'clock, other than known sober orderly householders or inhabitants, of their business abroad, and whither they are going, and in case they are refractory and give not a reasonable account of themselves and business, or are persons of ill fame or justly suspected to have any unlawful intention or design, then to restrain and secure them by imprisonment or otherwise, and keep them safe until the morning, and then carry them before a justice of the peace to be examined and proceeded against according to the nature of the offence, and the said watchmen are required to walk in and about the streets, wharves, lanes and principal parts of

Duty.

the town to see that good rule and order be kept, and to suppress all disorders and misrule.

And when at any time or times any one or more members of the council, justices of the peace or selectmen shall think

fit to walk by night to inspect the orders of the town, wherein they dwell, as well the said watchmen as one or more of the constables are required to attend and accompany them, and to observe and obey their lawful commands. Watchmen and constables to attend the members of the council, justices, &c.

SECT. 2. And be it further enacted, that the fee to the gaoler for persons taken up in the night, and committed to be secured only whilst the next day, shall be one shilling and no more. Fee for commitment.

CHAPTER CVIII.

AN ACT IN ADDITION TO THE ACT FOR MAKING LANDS AND TENEMENTS LIABLE TO THE PAYMENT OF DEBTS.

WHEREAS, in and by an act made and passed in the eighth year of the reign of his late majesty king William the third, lands and tenements are made liable to the payment of debts, and whereas in practising upon the said act, either through the perverseness of the creditor or corruption of the officer, executions for small sums are sometimes laid on part of housing and lands of great value in such manner as grievously to discommode or spoil the remainder, contrary to the good intent of the said act, the party injured being without remedy ever to recover his estate back again,

For prevention of such inconvenience and mischief for the future,

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when any land or tenement, in part or in whole, shall be levied and taken in execution for debt, it shall and may be lawful to and for the party, or his heirs whose estate is so taken in execution, within the space of one year, next following the levying execution thereon and not afterwards, to bring his suit against the creditor, or his heirs or tenant in possession, and recover back his estate, upon paying the full sum for which the same was taken, with interest from that time, and the reasonable necessary charges and disbursements laid out and expended thereon, for repairing or bettering of the same over and above what and so much as the rents, profits and improvements made thereof, shall fall short of reimbursing such charges, to be accounted for by the party for whom the same was taken in execution, his heirs or assigns, agreeable to the provision made in the act for equi- One year's time allowed to recover back housing or lands taken in execution for debt.

ty of redemption of estates upon mortgage forfeited for the condition broken.

The time of three years for redemption of forfeited estate upon mortgage, when to commence.

And whereas in and by the aforementioned act relating to the equity of redemption of mortgaged estates forfeited, the term of three years therein limited for the redemption is diversely construed as to the commencement thereof,

SECT. 2. Be it enacted and declared, that the said term of three years shall be reckoned and accounted from the time of the mortgagee's entry into and taking possession of such forfeited estate; any law, usage or custom to the contrary notwithstanding.

CHAPTER CIX.

AN ACT DIRECTING HOW MEETINGS OF PROPRIETORS OF LANDS LYING IN COMMON MAY BE CALLED.

WHEREAS the law has made provision and empowered the proprietors of lands lying in common, as well those already stated and divided, each one's proportion being known, as those not stated, divided or proportioned as aforesaid, to manage, improve, dispose and divide the same, in such way and manner as hath been or shall be concluded and agreed on by the major part of the interested, but no direction being given how a meeting of such proprietors may be orderly and regularly called and assembled,

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as any five or more of the proprietors of such common lands shall judge a proprietors' meeting to be necessary, they may make application to a justice of the peace within the said county where such lands lie for a warrant for the calling of a meeting, expressing the time, place and occasion thereof; and such justice is hereby empowered to grant a warrant for such meeting accordingly, directed to one of the proprietors, asking the same, or to the proprietors' clerk, requiring him to notify the proprietors of the meeting, and the time and place for the same, which notification shall be given in writing posted up in some publick place or places within the town or precinct where the lands lie, fourteen days before the day appointed for the meeting. And such and so many of the proprietors as shall be assembled and meet accordingly shall have power by a major vote to choose a clerk, to enter and record all votes and orders, that from time to

Fourteen days notice for a meeting.

time shall be made and passed in the proprietors' meetings, who shall be sworn to the faithful discharge of his office, as the law directs, for the swearing of town officers, and to agree upon, and appoint any other way or method of calling and summoning meetings for the future, as shall be most suitable and convenient to the proprietors, as also to pass orders for the managing, improving or dividing such common lands not before stated and divided, the voices always to be collected and numbered according to the interests present, where the same is known.

Power to choose a clerk.

And no other affair shall be transacted at any meeting of the proprietors, than what is expressed in the warrant or notification for such meeting.

CHAPTER CX.

AN ACT IN ADDITION TO THE LAW OF THIS PROVINCE, INTITLED AN ACT FOR HIGHWAYS, MADE IN THE FIFTH YEAR OF THE REIGN OF THE LATE KING WILLIAM AND QUEEN MARY.

WHEREAS, in and by the said act, "the selectmen of each town respectively within this province are thereby empowered, by themselves or others, to lay out, or cause to be laid out, only such particular and private ways as may be judged necessary for their respective towns," and whereas it may and does often happen that the lands of particular persons or proprietors may be, and are so situated and circumstanced as to make or render a particular or private way for the use of such person or proprietor of absolute necessity, which is not provided for in and by the said act,

SECT. 1. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the selectmen of each town respectively are hereby empowered by themselves, or others whom they shall appoint, to lay out, or cause to be laid out, particular or private ways between any of the inhabitants or proprietors within their respective towns, as shall be thought necessary to or for any and every original lot laid out, or to be laid out in and by any town or proprietors, so as no damage be done to any particular person or his propriety, without due recompense to be made, either by the town, if concerned, or such of the inhabitants

Selectmen to lay out particular or private ways.

or proprietors who desire and reap the benefit of the same, as the selectmen and parties concerned may agree, or otherwise as shall be ordered by the justices of the court of general sessions of the peace, as in and by the said act is already directed and provided for.

And whereas it hath been, and may yet be found by experience, that the selectmen of many towns within this province, through relation or other interest, have so very much delayed, and at other times absolutely refused to lay out, or cause to be laid out, particular or private ways for or within their several towns when thereunto desired, and the same have been really necessary, which hath been to the very great damage and grievance of persons concerned,

Justices empowered, by a committee, to lay out particular or private ways.

SECT. 2. Be it therefore further enacted by the authority aforesaid, that when and so often as the selectmen of any of the towns within this province shall unreasonably delay or refuse to lay out, or cause to be laid out, any such particular or private ways as aforesaid, to any such original lot or lots as aforesaid, being thereunto desired by one or more of the inhabitants or proprietors of land within their towns respectively, that then and in such case her majesty's justices of the peace within the several counties of this province at any of their general sessions may, and are hereby empowered by a committee whom they shall appoint to lay out, or cause to be laid out such particular or private ways within or for such town, or for or between any of the inhabitants thereof, to or for any such original lot or lots as aforesaid, so as no damage be done to any particular person in his land or propriety, without due recompense to be made, either by the town, if it be of general benefit, otherwise by such of the inhabitants as have the benefit of such particular or private way, as shall be ordered by the justices in their sessions as aforesaid, upon inquiry into the same, by a jury to be summoned for that purpose; any law, usage or custom to the contrary notwithstanding.

Recompense.

CHAPTER CXI.

AN ACT IN ADDITION TO THE ACT FOR UPHOLDING AND REGULATING OF MILLS.

WHEREAS it hath been found by experience, that when some persons in this province have been at great cost and expenses for building of mills serviceable for the publick

good and benefit of the town, or considerable neighbourhood in or near to which they have been erected, that in raising a suitable head of water for that service, it hath sometimes so happened that some small quantity of lands or meadows have been thereby flowed and damnified, not belonging to the owner or owners of such mill or mills, whereby several controversies and lawsuits have arisen,

For prevention whereof for the future,

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that where any person or persons have already, or shall hereafter set up any water mill or mills upon his or their own lands, or with the consent of the proprietors of such lands legally obtained, whereupon such mill or mills are or shall be erected or built, that then such owner or owners shall have free liberty to continue and improve such pond for their best advantage without molestation.

Mills built on lands by the owners or by their consent to be continued.

And if any person or persons find themselves aggrieved and damnified in their propriety of lands by its being flowed by the owner or occupant of such mills stopping or raising the water, that in every such case the party so damnified in his propriety, upon application for relief to the court of general sessions of the peace in the county where such mills or pond is, the said court be and hereby are empowered to issue out a warrant directed to the sheriff of the same county, to summon and empannel a jury of good and lawful men at the proper cost and charge of the owner or owners of such mill or mills, and the jury shall be sworn by a justice of the peace to a faithful indifferent appraisal of the yearly damage done to the person complainant, by flowing his or their land as aforesaid, and the jurors' verdict being returned by the hand of the sheriff to the next court of quarter sessions of the county where such mill or pond is, being allowed and recorded, shall be a sufficient bar against any action to be brought for any damages occasioned by the flowing of any such lands as aforesaid, save only an action of debt which the complainant may bring for the recovery of such yearly sum or sums of money from the owner or occupant of such mill assessed as aforesaid during the time of such flowing.

Remedy for damage on land being overflowed.

But if the jury find no damage for the complainant, then he or they to be at the cost of the jury, as shall be allowed by the justices of the said court.

CHAPTER CXII.

AN ACT TO PREVENT CAUSELESS ARRESTS, &c.

Writs to be endorsed.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that every person, principal or attorney, executor or administrator, taking out a writ or attachment against another, before he receive it out of the clerk's office, shall endorse his surname on the back thereof towards the bottom, and shall stand chargeable and be liable to answer and pay to the adverse party his costs arising by the arrest and charge of imprisonment, if any be, to be taxed in common form by the judges of the court where the writ is returnable in case of non-prosecution, discontinuance, or that the plaintiff be nonsuit, or judgment pass against him, to be levied on the principal, the executor, administrator or attorney that endorsed or took out such writ, if the principal be without the province, or be unable to pay the same.

No person to entertain more than two attorneys.

And no person shall entertain more than two of the sworn allowed attorneys at law, that the adverse party may have liberty to retain others of them to assist him, upon his tender of the established fee, which they may not refuse.

Attorneys mislaying the action to draw a new writ without a fee.

SECT. 2. And be it further enacted by the authority aforesaid, that if the plaintiff in any action suffer a nonsuit through the default, negligence or omission of his attorney that drew the writ, being an attorney at law, practising and legally admitted in the courts of law within this province, by mislaying of the action or otherwise, such attorney shall draw a new writ without a fee, in case the plaintiff see cause to revive his suit.

CHAPTER CXIII.

AN ACT AGAINST BURGLARY.

WHEREAS, notwithstanding the laws already made for the punishing of criminal offenders, many persons of late have been so hardy as to break open in the night the dwelling houses of several of his majesty's good subjects, and have

not only stolen their goods, but put them in fear and danger of their lives,

Be it therefore enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that if any person or persons shall hereafter in the night time break and enter into any dwelling house then inhabited, with a felonious intent to rob or kill, or to do some other felony, he or they so offending and being thereof convicted, shall be adjudged to suffer the pains of death; any former law, usage or custom to the contrary notwithstanding.

CHAPTER CXIV.

AN ACT FOR THE MORE SAFE KEEPING THE REGISTRY OF DEEDS AND CONVEYANCES OF LANDS.

WHEREAS the registering of deeds and conveyances of lands hath for a long time past proved very beneficial upon many accounts,

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that for the more safe and convenient keeping the registry of deeds and conveyances as aforesaid, there shall be chosen in each county within this province some discreet, suitable person having a freehold within the same, to the value at least of ten pounds per annum, to be the register in such county, who shall be chosen by the votes of the freeholders of each respective town at their meeting in March next, by the same rule and method as by law is prescribed for the choosing of county treasurers; and the person so chosen and accepting thereof, being first sworn before the superiour or inferiour court, or two justices within the county, quorum unus, shall be and continue in the aforesaid office five years, unless removed or displaced by order of the court of general sessions of the peace in such county for misdemeanour or failure in his duty, the said officer to give bond to the value of five hundred pounds, with two sureties, for the faithful discharge of his trust. And in case of non-acceptance, death or removal of any such person so elected, two or more of his majesty's justices within such county, quorum unus, are hereby empowered to grant out their warrants, directed to the selectmen of the several towns within such county, ordering them forthwith to convene the freeholders of their respective

A register to be chosen by the freeholders in March.

To continue five years, unless.

To give bond.

A new election in case.

towns, and proceed to the choice of some other meet person, the votes to be brought in as aforesaid. And that there shall be a publick office in the shire town of each county within this province for registering of deeds and conveyances as aforesaid; and that the fees for registering shall be the same as is therefor already by law established; any law, usage or custom to the contrary notwithstanding.

The office to be kept in the shire town.

CHAPTER CXV.

AN ACT IN ADDITION TO AN ACT OF LIMITATION FOR QUIETING OF POSSESSIONS.

WHEREAS the limitation of time for the continuance of possession by the aforesaid act did not extend or was understood to extend unto any houses or lands lying to the eastward of Piscataqua river, or in other the frontiers referred to in said act, but a further time was enlarged and lengthened out for the space of five years next after the ending of the war with the Indians, during which space all persons might pursue their right and claim to any houses and lands lying in those parts, and forasmuch as since the enacting the aforesaid law, the peace was made and concluded with the said Indians in the tenth year of the reign of his late majesty king William, notwithstanding which the aforesaid Indians broke out again into open war and rebellion in the second year of her late majesty's reign, and continued the same until the last year, by reason of which ruptures persons could not without great hazard and difficulty pursue their right and claim to houses and lands lying to the eastward of Piscataqua river, or in other the aforesaid frontiers, and in as much as the settling of the eastern parts and frontiers will be of great benefit to this province, the accomplishment whereof will be very much retarded and hindered, unless persons can be secured in their purchases and possessions,

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that there shall be a further time of five years from the last of this instant July, one thousand seven hundred and fifteen, allowed all persons to pursue their right and claim to any houses and lands in those parts and places and every of them, and no longer; and all

Five years time further.

actions and processes to be thereafter brought for the same are hereby excluded and for ever debarred.

Provided always, that there shall be a saving of all publick lands belonging to this province, not orderly disposed of. Proviso.

Provided also, that this act shall not be understood to bar the title of any infant, feme covert or person non compos mentis, imprisoned or in captivity, who shall be allowed the term of five years next after such imperfection removed to pursue their claim or challenge to any houses or lands wherein they have interest or title; and the time of five years shall be allowed to persons having an estate in reversion in any houses or lands, from the time such reversion falls, to recover their right; and persons beyond sea shall be allowed the term of ten years from the publication of this act, to pursue their claim and challenge to any houses or lands, as aforesaid. Interest, &c. five years after, &c. Persons beyond sea ten years.

CHAPTER CXVI.

AN ACT FOR PREVENTING DAMAGE TO THE HOUSING AND OTHER ESTATE WITHIN THE SEVERAL TOWNS OF THIS PROVINCE.

WHEREAS many persons of late have been so mischievous, more especially in the time of publick rejoicings, as to break the glass windows of several houses, and to commit divers other insolences in one or more of the towns within the said province, for prevention whereof for the future,

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, if any person or persons shall wilfully break the glass windows of any house within any of the towns of this province, either those made use of for publick occasions or belonging to any private person, or, by throwing stones, snow-balls, kicking foot-balls, or any other ways, or shall wilfully break down any fences belonging to any such house or houses, or any pastures or other inclosures, and be thereof legally convict before one or more of his majesty's justices of the peace within such county, or before the court of general sessions of the peace within the county where such town lies, he or they so offending shall not only be liable to the suit or action of the owner or possessor of such house or fences so damnified, but shall also pay a fine of twenty shil- Glass windows not to be broken. Fences not to be broken. Penalty.

lings at least, and not exceeding the sum of five pounds, for the use of the poor of the said town.

Treasurer empowered to sue for the fines.

SECT. 2. And be it further enacted by the authority aforesaid, that the treasurer for the time being of the town where the offence is committed be, and hereby is directed and empowered to sue any person or persons who shall do any damage as aforesaid to any of the houses made use of by the publick, either on civil or religious accounts, or to any of the publick burying places, and the money recovered on such suit shall be appropriated for the repairing of such house or houses, or burying places so damnified.

Persons refusing to pay the fine to be punished.

SECT. 3. And be it further enacted by the authority aforesaid, that if any person or persons offending against this act, and being thereof convict, shall refuse to pay the fine above mentioned (or when they are children or servants their parents or masters shall refuse to pay the same) he or they so convict shall be punished by whipping, setting in the stocks or cage, or by imprisonment, at the discretion of the court or justice before whom the prosecution shall be, according to the nature and degree of the offence and circumstances aggravating the same.

CHAPTER CXVII.

AN ACT FOR THE BETTER REGULATING OF TOWN AND PROPRIETARY MEETINGS.

WHEREAS by reason of the disorderly carriage of some persons in said meetings, the affair and business thereof is very much retarded and obstructed, for preventing whereof,

Moderator to be chosen by the majority of votes.

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that at every such meeting a moderator shall be first chosen by a majority of votes, who shall be thereby empowered to manage and regulate the business of that meeting. And when it shall so happen that any matter remains doubtful after a vote, the moderator is hereby directed and required that the same be decided by the poll, if seven or more desire it, presently after the vote is called in question, in proprietary meetings the said polls to be numbered according to their interest.

SECT. 2. And be it further enacted, that no person presume to speak before leave first obtained from the moderator, nor when any other is orderly speaking, and that all persons

be silent at the desire of the moderator, under the penalty and forfeiture of five shillings, for the breach of every such order. And if any person being by the moderator notified of such offence shall still persist in the same, that then the moderator shall order such person to withdraw from said meeting, and such offender upon his refusal thereof, shall forfeit and pay the sum of twenty shillings, the respective forfeitures to be recovered by the town treasurer of such town wherein any of the aforesaid offences shall be committed, before any one or more of his majesty's justices of the peace for the county wherein such town lies, to be disposed of, the one half for the use of the poor of said town, the other half to the said town treasurer.

Penalty on persons speaking without leave from the moderator.

Town treasurer to recover the fines.

SECT. 3. And be it further enacted, that when and so often as ten or more of the freeholders of any town shall signify under their hands to the selectmen their desire to have any matter or thing inserted into a warrant for calling a town meeting, the selectmen are hereby required to insert the same in the next warrant they shall issue, for the calling a town meeting, and that no matter or thing whatsoever shall be voted or determined but what is inserted in the warrant for calling said meeting.

Ten or more freeholders may desire a town meeting.

Provided, that town meetings for choice of representatives be regulated by the selectmen, as is ordained in the fourth year of king William and queen Mary.

CHAPTER CXVIII.

AN ACT IN ADDITION TO THE ACT, INTITLED AN ACT FOR REGULATING OF TOWNSHIPS, CHOICE OF TOWN OFFICERS, AND SETTING FORTH THEIR POWER, MADE AND PASSED IN THE FOURTH OF WILLIAM AND MARY.

BE it enacted and declared by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that where any person or persons is convicted of the breach of a town order, or by-law before a justice of the peace, and neglect, or be unable to pay their fine, that in every such case it shall and may be lawful to and for such justice to order such person or persons either to stand committed to the gaol of the county by the space of twenty-four hours, and not exceeding five days, or be set in the cage or stocks, not exceeding the space of four hours.

CHAPTER CXIX.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT FOR THE SETTLEMENT AND DISTRIBUTION OF THE ESTATES OF INTESTATES, MADE AND PASSED IN THE FOURTH YEAR OF THE REIGN OF KING WILLIAM AND QUEEN MARY.

BE it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that where two or more have letters of administration granted them of any intestate's estate, and one or more of them take all or the greatest part of such estate into his or their hand or hands, and refuse to pay the debts or funeral charges of such intestate, or come to an account with the other administrator, that then and in such case it shall and may be lawful for such administrator aggrieved to bring his action of account against the other administrator or administrators of the estate of the intestate in his or their hands, and recover his proportionable part or share of such intestate's estate as shall belong or appertain unto him after debts, funeral charges, and other dues of the intestate are fully satisfied and paid; any law, usage or custom to the contrary thereof in any wise notwithstanding.

CHAPTER CXX.

AN ACT IN FURTHER ADDITION TO AN ACT, INTITLED AN ACT RELATING TO SURETIES UPON MESNE PROCESS IN CIVIL ACTIONS, MADE AND PASSED AT A SESSION OF THE GENERAL COURT OR ASSEMBLY THE EIGHTH OF NOVEMBER, 1693, IN THE FIFTH YEAR OF THE REIGN OF KING WILLIAM AND QUEEN MARY.

WHEREAS in the said act it is provided, "that all writs of scire facias shall be taken out and served upon the sureties within twelve months after the first trial, and not afterwards," and forasmuch as in several counties within this province, the superiour court of judicature, court of assize and general gaol delivery, is held and kept but once within

twelve months, whereby the party or parties that recover judgment at such superiour courts can have no benefit of the said act,

Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that writs of scire facias may be taken out and served upon sureties for the space of two years after the trial, upon an appeal in all such counties where a superiour court of judicature, &c. is held but once in a year, any law, usage or custom to the contrary notwithstanding.

Writs of scire facias served upon sureties within two years after trial.

CHAPTER CXXI.

AN ACT IN FURTHER ADDITION TO AN ACT, INTITLED AN ACT FOR MAKING LANDS AND TENEMENTS LIABLE TO THE PAYMENT OF DEBTS, MADE AND PASSED IN THE EIGHTH YEAR OF THE REIGN OF KING WILLIAM.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when any creditor or creditors shall recover judgment in any of his majesty's courts for any sum or sums of money and costs of suit, and the debtor shall not satisfy the said judgment in money or other estate to the acceptance of the creditor, he shall have execution thereupon, and deliver the same to the sheriff of the county where the debtor's lands and houses lie and are being, who shall call three appraisers to be chosen, one by the creditor or creditors, another by the debtor or debtors, (if he or they so please) and the third by such sheriff, and having taken their oaths before any justice of the peace, faithfully and impartially to appraise such lands and tenements as shall then be shewed unto them as the estate of such debtor or debtors, they shall appraise the same to satisfy such execution, with the officer's fees, and set out such lands and tenements by metes and bounds, and the sheriff shall thereupon deliver possesssion and seizin thereof to such creditor or creditors, or his or their attorney, which being returned and recorded, shall be a good title to such creditor or creditors, saving equity by redemption, as by law is prescribed; and when it so happens that lands and tenements cannot be divided and set out by metes and bounds as aforesaid, then such sheriff shall extend such execution upon the rent of

Creditors recovering judgment, and the debtor not satifying the same to the creditor's acceptance, he shall have execution thereupon.

Appraisers, how chosen.

Equity by redemption.

such lands and tenements, and give seizin thereof to such creditor or creditors, or his or their attorney, and cause the tenant or tenants thereof to attorn and become tenant or tenants of such creditor and creditors, and to pay their rents to him or them accordingly, or, upon refusal thereof, to turn such tenant or tenants out of the possession thereof, and give livery, seizin and possession of the same to such creditor or creditors to hold and enjoy such lands and tenements till such judgment, interest and fees be fully satisfied and paid, reserving thereout the widow's thirds or dower, if any be.

Proviso. Provided always, that it shall and may be lawful for any such debtor or debtors, or his or their agent or attorney, at any time or times before such judgment, interest and charges be fully satisfied, to tender and pay to such creditor or creditors the full of his debt, interest and charges, who is hereby obliged to accept thereof, and surrender up to such debtor or debtors, his agent or attorney, such lands and tenements, and deliver up quiet and peaceable possession thereof; any law, usage or custom to the contrary thereof notwithstanding.

Indian natives. Provided always, that nothing in this act contained shall extend to the lands owned by the Indian natives of this province.

CHAPTER CXXII.

AN ACT FOR SETTLING OF GRANTS.

WHEREAS sundry grants of lands have been made by the general court at divers times unto particular persons, of which grants the greatest part has been taken up, but some may be yet standing out,

Persons to bring in their grants within three years. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that all persons claiming a right to any tract or tracts of land by grant from the general court, and not yet laid out, shall, within the space of three years from the publication of this act, bring a copy of their grant to the general assembly of this province, in order to have the same laid out and confirmed to them; and all such as neglect or refuse to bring in their claims as abovesaid shall forfeit their right to such grants.

Provided, this act be not understood to bar the title of any infant, feme covert, or person non compos mentis, imprisoned, in captivity, or beyond the seas, who shall be allowed the term of three years after such imperfection removed, to pursue their claim and challenge to any grants of lands so made to them or their predecessors, any thing in this act to the contrary notwithstanding. Proviso.

CHAPTER CXXIII.

AN ACT IN ADDITION TO THE ACT, INTITLED AN ACT FOR THE PUNISHING CRIMINAL OFFENDERS.

WHEREAS when any person is apprehended for theft or robbery, and admitted to bail, the recognizance is only to the king, to answer for the crime, whereby (in case the offender doth not appear but make default) the party injured loseth the benefit of an act, intitled an act for the punishing criminal offenders, which gives the party injured treble damages upon conviction,

For remedy whereof,

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that if any person shall be apprehended for any of the crimes mentioned in those paragraphs of the abovesaid act which relate to theft or robbery, and be admitted to bail, he shall not only recognize to the king's majesty for his appearance at the court in said recognizance mentioned, to answer for his crime, but shall also enter into another recognizance with sufficient sureties to the party injured for treble of the money, goods or chattels which he shall be charged with stealing; and if the said offender shall make default, and not appear to take his trial according to his recognizance, in such case the said recognizance shall be declared forfeited by the court where the said criminal ought to have been tried, and the party injured shall recover treble damages against the sureties, for so much as can be made appear to be stolen, as if the offender had put himself on his trial, and had been convict, any law, usage or custom to the contrary notwithstanding. Persons apprehended for theft, &c. admitted to bail shall not only recognize to the king, but also recognize with sureties to the person injured, &c.

CHAPTER CXXIV.

AN ACT IN ADDITION TO AN ACT FOR THE ORDERLY CONSUMMATING OF MARRIAGES, MADE AND PASSED IN THE SEVENTH YEAR OF THE REIGN OF KING WILLIAM THE THIRD.

WHEREAS in and by the said act it is provided, "that no person other than a justice of the peace, and that within his own county only, or ordained minister, and that only in the town where he is settled in the work of the ministry, shall or may presume to join any persons together in marriage, nor shall any justice or minister join any persons in marriage other than such, one or both of whom are inhabitants or residents in such county or town respectively,"

Ministers' power to marry enlarged.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the power granted ministers to join persons together in marriage be hereby enlarged, so as that where there shall be no settled ordained minister in any town or precinct, or where the only settled ordained minister of any town or precinct is himself to be married, it shall and may be lawful in such cases for the next settled ordained minister in another town, within the same county, to join in marriage the minister or inhabitants of such town or precinct destitute of such settled ordained minister, if such minister or inhabitants desire it, according to the rules prescribed by the laws of this province, for the consummating marriages.

Allowance of 4s.

SECT. 2. And be it further enacted by the authority aforesaid, that every justice or minister shall have four shillings for each marriage, and pay out of it six pence to the town clerk, when they return their certificate to him.

And whereas there is great failure in returning certificates of marriages to the town clerk,

10s. fine.

SECT. 3. Be it enacted, that each justice or minister neglecting to make due return to the town clerk as the law directs, every of them shall pay a fine of ten shillings for such neglect.

Town clerk to give in to the clerk of the sessions a list of all marriages.

SECT. 4. And be it further enacted, that every town clerk shall give in a true list of all marriages returned to him by the justices and ministers respectively, unto the clerk of the sessions of the peace in each county sometime in the month of April yearly and every year, upon the penalty of forfeiting twenty shillings fine for every neglect; and every town clerk shall pay two pence to the clerk of the peace for

every marriage returned by him as aforesaid, which shall be the fee for the clerk of the peace for his recording the same; and each fine is to be recovered by bill, plaint or information in any court of record.

Provided, that every justice of peace or minister authorized to join persons together in marriage, every clerk of the peace and town clerk respectively, may be prosecuted upon this or any former act relating to marriages, within two years after the offence committed, and not afterwards; any law, usage or custom to the contrary notwithstanding, Proviso.

CHAPTER CXXV.

AN ACT FOR THE MORE EFFECTUAL PREVENTING DEFAULT IN THE APPEARANCE OF JURORS.

WHEREAS the mulcts or fines set upon jurors for not appearing and attending the several courts of justice within this province, whereto they are respectively chosen and summoned, are by law limited to the sum of forty shillings, by reason whereof persons most able and best qualified to perform that duty oft times choose rather to incur and undergo so small a penalty than to perform that service, which hath proved a general inconvenience, tending greatly to the damage of many persons in cases of the greatest moment and concern, as well as very much retarding the business and affairs of the several courts,

For remedy whereof,

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the justices of the superiour court of judicature, court of assize and general gaol delivery, and the justices of the inferiour court of common pleas, and of the general sessions of the peace respectively, shall and hereby are required to set reasonable fines upon all jurors duly returned to serve in the said courts that make default, unless necessitated thereto by reason of sickness, or some other extraordinary let or hinderance, not less than the sum of four pounds, nor exceeding the sum of six pounds each, at the discretion of the said justices, and to cause the same to be levied and disposed of as by law provided. Superiour and inferiour court to set fines on jurors that make default.

Petty juries allowance thirteen shillings.

SECT 2. And be it further enacted, that the fee or allowance to be paid to the petty jury for each verdict shall be thirteen shillings; any law, usage or custom to the contrary notwithstanding.

CHAPTER CXXVI.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT RELATING TO THE DUTY AND OFFICE OF A CORONER, MADE IN THE TWELFTH YEAR OF KING WILLIAM THE THIRD.

WHEREAS in and by the said act the coroners of the several counties of this province are empowered to serve and execute all writs and processes directed unto them against the sheriffs of the same county, but no provision is therein made to serve any writ or process wherein a sheriff of the same county is or may be plaintiff, and so a failure of justice may happen if not remedied,

Coroners empowered to serve writs in case &c.

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as the sheriff or sheriffs of any of the counties within this province, their under sheriffs or deputies, or any of them, are or may be concerned as plaintiff, complainant or defendant in any writ, action or process, that in such case the coroner of the same county shall be and hereby is empowered to serve and execute the same, any law, usage or custom to the contrary notwithstanding.

CHAPTER CXXVII.

AN ACT IN ADDITION TO AN ACT PASSED IN THE FIRST YEAR OF QUEEN ANNE, INTITLED AN ACT MORE EFFECTUALLY PROVIDING FOR THE SUPPORT OF MINISTERS.

WHEREAS in and by the said act a power is provided and given to the selectmen of any town, from which any district or precinct is set off, to assess the inhabitants of the same the sums agreed on for the support of the minister, in case the assessors of such precinct shall neglect or refuse to do the same, but no like power with reference to the charge of building or repairing of the publick meeting-houses for the worship of God, vested either in the assessors or the selectmen,

Assessors empowered to raise and assess money for building meeting-houses.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as the major part of the inhabitants of any precinct or district have or, at a meeting of the same legally warned, shall agree on the building, finishing or repairing of any publick meeting-house, or the defraying any other necessary charge for the support of the worship of God, and agree on any sum or sums of money for that purpose, the assessors of such precinct or district are hereby empowered to assess and raise the same on their respective inhabitants, and in case such assessors shall neglect or refuse so to do, then and in that case the selectmen of the town, from which such precinct or district is derived, are hereby empowered and required to assess the inhabitants of such precinct or district the sum or sums of money so agreed on, to be collected and levied in like manner as is directed in and by said act, and all regular or legal precincts or districts are hereby also empowered to choose a committee or other officers for the better management of the affairs of their respective district or precinct as aforesaid.

Inhabitants of any town from which several districts are set off, their power.

SECT. 2. And be it further enacted by the authority aforesaid, that in all such towns where there are or shall hereafter be one or more districts or precincts regularly set off, the remaining part of such town shall be, and are hereby deemed, declared and constituted an entire perfect district, parish or precinct, and the first or principal of said town, and the inhabitants thereof to have full power to choose a committee for the regulation and management of all affairs relating to the support of the publick worship of God, and for the choosing all necessary and proper officers in and for the

said precinct, parish or district, and further to have all such powers and privileges as by any of the laws of this province are given or annexed to any district or precinct, any law, usage or custom to the contrary notwithstanding.

CHAPTER CXXVIII.

AN ACT IN ADDITION TO THE SEVERAL ACTS FOR SETTLEMENT AND SUPPORT OF SCHOOLMASTERS, &c.

WHEREAS, notwithstanding the many good and wholesome laws of this province for the encouraging of schools, and the penalty first of ten pounds, and afterwards increased to twenty pounds on such towns as are obliged to have a grammar schoolmaster and neglect the same, yet by sad experience it is found that many towns that not only are obliged by law, but very able to support a grammar school, yet choose rather to incur and pay the fine or penalty than maintain a grammar school,

Penalty. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the penalty or forfeiture for non-observance of the said law henceforth shall be thirty pounds on every town that shall have the number of one hundred and fifty families, and forty pounds on every town that shall have the number of two hundred families, and so *pro rata* in case the town consist of two hundred and fifty, or three hundred families, to be recovered, paid and employed in manner, and to the use as by the law is directed, any law, usage or custom to the contrary notwithstanding.

CHAPTER CXXIX.

AN ACT IN FURTHER ADDITION TO AN ACT, INTITLED AN ACT FOR REGULATING FENCES, CATTLE, &c.

BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the au-

thority of the same, that in any and every town of this province where several allotments of upland and meadow are inclosed and fenced in one general field, or where there have been so inclosed, fenced and improved, or where all the proprietors of such land shall hereafter see cause to inclose, fence and improve the same in such manner, the proprietor or proprietors of each lot respectively during the time of his or their feeding, planting, mowing or otherwise improving his part in such general field, shall make and maintain his or their respective part of the whole fence, according to the quantity of acres of land contained in his or their allotment, until the major part of the propriety shall see cause to alter the form of their improvement, at a meeting of such proprietors legally warned for that purpose; and for the better enabling such proprietors to call a meeting for the ends aforesaid, it shall be in the power of any justice of the peace for the county where such lands lie, upon application to him made by any two of the proprietors of such general fields, to issue out a warrant for such meeting, according to the form of an act made and passed in the twelfth year of queen Anne, directing how meetings of proprietors of lands lying in common may be called, the whole general fence to be measured, and each man's part to be set out and apportioned by two or three discreet indifferent persons appointed and sworn for this purpose, by any justice of the peace for the said county, excepting the major part of the propriety agree and proportion the same among themselves.

...ences how to be maintained.

Justice of peace, upon application, to call a meeting of proprietors.

And when the proportion of each proprietor in such general fence is adjusted and determined, the same shall be entered upon record by the clerk of the propriety, and where there is no such clerk, by the clerk of the town where the land lies, any law, usage or custom to the contrary notwithstanding.

Each proprietor's proportion in general fence to be [entered by the clerk of the propriety, or town clerk.

CHAPTER CXXX.

AN ACT FOR THE FURTHER REGULATION OF FERRIES.

WHEREAS, notwithstanding the provision already made for the speedy transportation of all travellers and passengers over the ferry at Winnisimmit, yet through the misconstruction of the said law persons are unreasonably delayed and kept from passing said ferry, until the return of the boat

from the opposite side, so that in effect the benefit proposed in having three boats is lost,

Therefore for remedy thereof, and that all passengers may be transported speedily,

Two boats to be always passing upon the water.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that two of the three boats appointed for the service of the said ferry shall be always passing on the water from side to side, and as one of the boats puts off from either side, the boat on the contrary side shall be obliged to put off, unless the weather be stormy, or not safe for the passengers, nor shall any persons who want a passage cross said ferry, when to the number of five, be delayed under the penalty of twenty shillings.

Ferrymen to keep planked trucks on each side the water.

Penalty.

SECT. 2. And be it further enacted, that at Charlestown, Winnisimmit, Salem and Newbury ferries there be henceforth provided and kept on each side of the water, by the ferrymen of the respective ferries, a pair of planked trucks of a sufficient breadth, for the safe and more convenient passing of coaches, calashes, horses and cattle in and out of the ferry-boats, on the penalty of ten shillings for every three months neglect, to be recovered before any of his majesty's justices of the peace in the county, by any person who shall inform, and sue for the same, any law, usage or custom to the contrary hereof notwithstanding.

CHAPTER CXXXI.

AN ACT FOR THE PUNISHING AND PREVENTING OF DUELLING.

WHEREAS, to the great dishonour of Almighty God, in defiance of the laws of nature and nations, contrary to the peace of our sovereign lord the king and the precious life of man, there have been in this province of late years several duels and dangerous rencounters and quarrels, for the preventing and suppressing whereof,

Punishment for duels and rencounters.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that whoever, from and after the publication of this act, shall, of their own heads, and for private malice, displeasure, in fury or revenge, fight a duel, combat, or engage in a rencounter with rapier or small-sword, back-sword, pistol, or any other dangerous weapon, to the danger of life, maihem, or wounding of the parties, or the affray of

his majesty's good subjects, although death doth not thereby ensue, and be thereof convicted by due course of law before the court of assize or court of general sessions of the peace in the respective counties of this province, shall be punished by fine not exceeding a hundred pounds, imprisonment not exceeding six months, or corporally punished, not extending to member or pillory, any or all of the said punishments at the discretion of the court that have cognizance of such offence, and the nature and circumstances of the fact and persons may require, and be also further obliged to find sureties for the peace and good behaviour for so long a time as the said court shall judge reasonable. To find sureties.

Sect. 2. And be it further enacted by the authority aforesaid, that if any person or persons, by word, writing or message, challenge another to fight a duel, and be thereof convicted by due course of law, he or they shall be punished in manner and form as aforesaid. Challenges.

CHAPTER CXXXII.

AN ACT IN FURTHER ADDITION TO AND SUPPLEMENT OF AN ACT, INTITLED AN ACT FOR MAKING LANDS AND TENEMENTS LIABLE TO THE PAYMENT OF DEBTS, MADE AND PASSED IN THE EIGHTH YEAR OF KING WILLIAM.

Sect. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when any person or persons shall recover judgment in any of his majesty's courts within this province for any sum or sums of money, or any other specie, or for costs of suit, and the person or persons against whom judgment shall be recovered is either unwilling or unable to satisfy such judgment by money or other specie, and the creditor or creditors finding no other personal estate to his or their acceptance to extend execution upon for satisfaction thereof, and doth therefore think fit to levy upon the real estate of such debtor or debtors for the end aforesaid, rather than on the person of the debtor, that then and in every such case, the sheriff, under sheriff or deputy, shall cause three indifferent discreet men, being freeholders in the county, one to be chosen by the creditor or creditors, one by the debtor or debtors, if he or they see cause, and the third by the sheriff or other officer that shall serve the same, to be sworn before one or more of his majes- Real estates of debtors liable to executions.

ty's justices in said county, faithfully and impartially to appraise such real estate as shall be shewn to them, who shall appraise the same to satisfy the execution, with all fees, and set out such estate by metes and bounds; and the sheriff or other officer shall deliver possession and seizin thereof to the creditor or creditors, his or their attorney, which being returned and recorded in the clerk's office of the court out of which the same issued, shall make a good title to such creditor or creditors, his or their heirs and assigns in fee, saving equity by redemption as by law is prescribed. And when it so happens that the real estate extended upon cannot be divided and set out by metes and bounds, as before prescribed, that then execution shall be extended upon the rents of such real estates and seizin given thereof to the creditor or creditors, his or their attorney, and cause the person or persons in the possession and improvement to attorn and become tenant or tenants to such creditor or creditors, and to pay their rents to him or them accordingly; and upon refusal thereof to turn the person or persons out of the possession thereof, and give livery, seizin and possession of the same to the creditor or creditors to hold and enjoy all such real estate to him or them, their heirs or assigns, till the judgment, interest and fees be fully satisfied and paid, reserving thereout the widow's thirds or dower, if any there be.

Saving equity of redemption.

Execution to be extended on rents.

Proviso.

Provided always, that it shall and may be lawful for any debtor or debtors, his or their heirs, executors or administrators at any time or times before the judgment with the interest and charges be fully satisfied, to tender and pay to the creditor or creditors, his or their heirs or assigns the full remainder of the debt, interest and charges, who is obliged to accept thereof, and surrender up all such real estate to the debtor or debtors, his heirs, executors or administrators, and deliver up peaceable and quiet possession thereof.

SECT. 2. And be it further enacted by the authority aforesaid, that an act made and passed in the second year of his present majesty, intitled an act in further addition to an act, intitled an act for making lands and tenements liable to the payment of debts, made and passed in the eighth year of the reign of king William, and all and singular the clauses, paragraphs, articles, directions, matters and things in the said act contained, be, and hereby are repealed, made null and void.

Proviso.

Provided always, that all real estates taken in execution and levied upon, and all other acts and things done pursuant to and by virtue of the aforesaid law, notwithstanding the repealing hereof, shall be held good and effectual to all intents and purposes; and whoever is in the possession of any real estate by means thereof, it shall be a good estate in fee

to him or them, their heirs and assigns; any law, usage or custom to the contrary thereof notwithstanding.

Provided also, that nothing in this act contained shall extend to the lands owned by the Indian natives of this province. Proviso.

CHAPTER CXXXIII.

AN ACT FOR THE REGULATION OF THE DECREES AND OTHER PROCEEDINGS OF THE SEVERAL JUDGES OF PROBATE IN THE RESPECTIVE COUNTIES OF THIS PROVINCE, AND OF APPEALS THEREFROM.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that after the decease of any person intestate, letters of administration be taken out within thirty days or sooner, and an inventory taken of all the estate of the deceased within three months or sooner by three suitable persons appointed and put upon oath for their due performance of that service by the judge, or one justice in the said county, in case the estate be not in the town where the judge himself dwells, or within ten miles thereof, a certificate of such appointment and oath taken by the justice to be returned to the probate office with the said inventory. Letters of administration, &c. of intestate estates to be taken out.

SECT. 2. And be it further enacted by the authority aforesaid, that when the executor or administrator of any estate shall obtain license from the superiour court to make sale of all or any part of the housing and lands of the deceased, for the payment of debts, before sale be made of any such housing and lands, the executor or administrator shall give thirty days publick notice by posting up notifications of such sale in the town where the deceased person last dwelt, and in the two next adjoining towns, as also in the shire town of the said county, and whosoever will give most shall have the preference in such sale; and in case it be an insolvent estate, the whole produce of such sale to be divided in due proportion to and among the creditors. Administrators and executors to give publick notice of the sale of lands, &c.

And whereas some doubt hath arisen touching such estate real and personal as is not plainly devised, given or bequeathed in any last will and testament,

Estate not bequeathed to be distributed as intestate estates.

SECT. 3. Be it resolved and enacted, that from and after the end of this present session of the general assembly, all such estate, whether real or personal, that is not plainly given away or disposed of in and by the last will and testament of any person thereafter to be proved, the same accordingly shall be distributed in the same manner as if it were an intestate estate, and executor or executors shall administer on the same as such.

Division of real estate of intestates.

SECT. 4. And be it further enacted by the authority aforesaid, that when the real estate of an intestate will conveniently accommodate more of the children than the eldest son, and being so represented and made to appear to the judge of probate, he shall have power to settle it on so many of the children, preference being always had to the sons, as it will conveniently accommodate, without prejudice to or spoiling of the whole, in the manner as it was to have been settled upon the eldest son before the making of this act.

And whereas provision is already made for an appeal to the governor and council from the orders, decrees, sentences or denials of the several judges for the probate of wills and granting letters of administration, within the respective counties of this province, but no time limited for the bringing such appeals, which has been found inconvenient,

Limitation of appeals from judges of probate.

SECT. 5. Be it therefore enacted by the authority aforesaid, that no appeal from any sentence, order, decree or denial of any of the judges for the probate of wills and granting letters of administration, allowing accounts and distribution of estates within this province shall be admitted, unless it be claimed within six months after the making such order, sentence, decree or denial, and except security be given by the appellant within ten days to prosecute the appeal with effect, and except reasons of appeal be filed in the register's office of the court of probate within ten days after security given and fourteen days at least before the hearing before the governor and council. And in case the party or parties so appealing fail in the prosecution of their said appeal to effect, in three months time from the claiming the same, then the adverse party to have the benefit of the sentence, order or decree so appealed from by filing a complaint to the governor and council, in like manner as is provided by law for not prosecuting an appeal from the judgment of an inferiour court.

Proviso.

Provided always, that any person beyond the sea, or out of New England, who has no sufficient attorney within this province, at the time of such order, sentence, decree or denial, shall have six months after his or her return, or constitution of such attorney, unless such person was of age at his departure out of the province, to claim and prosecute their appeal as aforesaid.

Guardians for persons under age and non compos.

SECT. 6. And be it further enacted, that before any decree, order or division be made concerning intestate estates, where any infants or persons under age or non compos are interested, guardians shall be appointed for all such persons according to law, who shall be fully empowered to appeal from any such order, decree or sentence, if they see cause, to be prosecuted in manner as aforesaid.

Judges of probate to hold certain fixed days.

SECT. 7. And be it further enacted, that the judges of the probate of wills, and for granting letters of administration of intestate estates in the respective counties of the province, shall have and hold certain fixed days for the making and publishing their orders and decrees, and such days to be determined and known by publick notifications or advertisements in the several counties; any law, usage or custom to the contrary notwithstanding.

CHAPTER CXXXIV.

AN ACT TO ENABLE THE SEVERAL TOWNS, PRECINCTS, DISTRICTS AND PARISHES, LEGALLY SET OFF, TO CHOOSE COLLECTORS FOR THE GATHERING ANY TOWN, COUNTY, PRECINCT, DISTRICT OR PARISH RATES OR ASSESSMENTS.

WHEREAS the laws of this province have made sufficient provision for the gathering in and collecting the publick rates or taxes by collectors, if any are chosen and accept thereof, and on their refusal, by the constables of each town, precinct or district, and the form of an oath to be administered to such constables or collectors established, but no provision is made for the obliging any person chosen collector for any town, county, precinct, district or parish rates or assessments, to serve in said office, nor form of the oath such persons ought to be under for the due observance of their office, wherefore,

Collectors of rates to be chosen.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that it shall be in the power of every town, precinct, district or parish within this province legally set off, some time in the month of March annually, at the same time they choose other town, precinct, district or parish officers, to choose one or more persons to serve as collector or collectors of all such rates or assess-

ments as shall be granted or agreed by such town, or by the general sessions of the peace in which county the same lieth, or by any precinct, district or parish regularly set off as aforesaid, who shall be under the oath herein after provided, which oath shall be administered by a justice of the peace, if any such live within the same town, or by the selectmen of such town, as the law already provides; and any person that shall be chosen into the office of a collector as aforesaid, and that shall refuse to accept thereof, or deny and neglect to take the oath herein expressed, shall forfeit and pay unto the town, precinct, district or parish treasurer the sum of three pounds, to the use of the poor of such town, precinct, district or parish; and if such person neglect or refuse to pay his fine, he shall be proceeded against as the law directs for the prosecuting of persons refusing to serve in the office of a constable; provided no person in commission for any office civil or military, church officers, or members of the house of representatives for the time being, nor other person that has served as constable or collector within the space of seven years before, shall be obliged to serve in the office of collector.

To be under oath.

Penalty on refusal.

Persons exempt.

Sect. 2. And be it further enacted by the authority aforesaid, that every person chosen collector as aforesaid and accepting thereof shall settle and issue his accounts, of all rates and assessments to him committed, with the selectmen of such town, or person mentioned in the warrant, to whom the rate is payable, within twenty days after the time is expired in the said warrant, to be annexed to the rate or assessment to him committed for payment thereof, under the pain and penalty of any collector so neglecting or refusing, the sum of twenty shillings for every month he shall neglect so to do, to be recovered as in and by this act is provided for refusal to accept of such office, and to be applied for the use and intent aforesaid; any law, usage or custom to the contrary notwithstanding.

Collectors to make up accounts of assessments.

Penalty for neglect.

Sect. 3. And be it further enacted by the authority aforesaid, that the form of the oath to be administered to any person chosen collector shall be as follows:

Whereas you, A. B. are chosen collector within the town of C. or precinct, district or parish within the town of C. for one year now following, and until other be chosen and sworn in your place, you do swear that you will faithfully, and with what speed you can, collect and levy all such rates or assessments and sums of money committed to you to collect, and for which you shall have sufficient warrant, rendering account thereof, and paying in the same according to the direction in your warrant. So help you God.

Form of the oath.

CHAPTER CXXXV.

AN ACT FOR EXPLANATION OF, AND SUPPLEMENT TO AN ACT REFERRING TO THE POOR, &c.

WHEREAS the law for binding out poor children apprentices is misconstrued by some to extend only to such children whose parents receive alms, for explanation whereof,

SECT. 1. Be it declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the selectmen or overseers of the poor, in any town or district within this province, or the greater part of them, shall take order, and are hereby empowered from time to time, by and with the assent of two justices of the peace, to set to work or bind out apprentice as they shall think convenient, all such children whose parents shall, by the selectmen or the overseers of the poor, or the greater part of them, be thought unable to maintain them, whether they receive alms, or are chargeable to the place or not, so as that they be not cessed to publick taxes or assessments for the province or town charges, male children till they come to the age of twenty-one years, and females till they come to the age of eighteen years, or time of marriage, which shall be as good and effectual in law to all intents and purposes, as if any such child were of full age, and by indenture or covenant had bound him or herself, or that their parents were consenting thereto, provision therein to be made for the instructing of children so bound out, to wit, males to read and write, females, to read, as they respectively may be capable; and the selectmen or overseers of the poor shall inquire into the usage of children bound out by themselves or their predecessors, and endeavour to defend them from any wrongs or injuries. Children of poor people to be put to work, or bound out.

And for the better preventing of idleness and loose and disorderly living,

SECT. 2. Be it further declared and enacted by the authority aforesaid, that the selectmen or overseers of the poor, or the greater part of them, be and are further empowered, by and with the assent of two justices of the peace, to set to work all such persons, married or unmarried, able of body, having no means to maintain them, that live idly, and use or exercise no ordinary and daily lawful trade or business to get their living by; and no single person of either sex, under the age of twenty-one years, shall be suffered to live at their own hand, but under some orderly family government; nor shall any woman of ill fame, married or Idle persons to be set to work.

unmarried, be suffered to receive or entertain lodgers in her house; and the selectmen or overseers of the poor, constables and tythingmen are hereby ordered to see the due observance of this act, and to complain and inform against any transgressions thereof to one or more justices of the peace, or the court of general sessions of the peace, who are hereby respectively required and empowered, upon due conviction of the offender or offenders, for living idly or disorderly, contrary to the true intent of this act, to commit or send such offenders to the house of correction or workhouse, there to remain and be kept to labour until they be discharged by order of such justice or justices of the court of general sessions of the peace, unless such person or persons so complained of shall give reasonable caution or assurance to the satisfaction of the justice or court that they will reform.

Idle persons to be sent to the house of correction.

Provided, this act shall not be construed to extend to hinder any single woman of good repute from the exercise of any lawful trade or employment for a livelihood; any law, usage or custom to the contrary notwithstanding.

Proviso.

And any two justices committing any person or persons as aforesaid are hereby empowered, as they shall find cause, to discharge them again.

CHAPTER CXXXVI.

AN ACT IN EXPLANATION OF, AND IN ADDITION TO AN ACT, MADE IN THE THIRTEENTH YEAR OF KING WILLIAM, INTITLED AN ACT FOR REVIEW IN CIVIL CAUSES.

WHEREAS in and by the said act it is provided, "that it shall be in the liberty of the party aggrieved at the judgment given in any inferiour court of common pleas, or in the superiour court of judicature respectively, by new process to review the said cause once in each court,

And whereas it hath sometimes happened, that, contrary to the meaning of the said act, the party in whose favour the judgment of the superiour court hath been given, hath very soon after such judgment taken out his writ of review, pretending himself aggrieved by such judgment, and entered his action thereupon, when it hath been with intent to prevent the other person who was really aggrieved bringing his writ of review, and upon the trial of such review, a doubt has arisen, as well from the nature of the review, as

from the form of the writ, whether the defendant could have any relief, or indeed any other verdict or judgment than costs awarded him, and thereupon as well the design of the said law defeated, as manifest injustice sometimes may be done, for remedy whereof,

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as it shall happen that both parties bring forward and enter their writs of review in the superiour court, that then and in such case both writs or actions of review shall be committed together by the court to the same jury, in order to reverse, confirm or alter the judgment of the superiour court on the appeal according to law and justice, and as the matter shall appear upon the trial; any law, usage or custom to the contrary notwithstanding.

Writs of review of both parties to be committed to the jury.

CHAPTER CXXXVII.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT FOR THE MORE SAFE KEEPING THE REGISTRY OF DEEDS AND CONVEYANCES OF LANDS, MADE IN THE FIRST YEAR OF HIS PRESENT MAJESTY'S REIGN.

WHEREAS in and by an act made in the first year of his present majesty's reign, intitled an act for the more safe keeping the registry of deeds and conveyances of lands, it was, among other things, enacted, "that there should be chosen in each county within this province some suitable person to be register in each county within the same, who should be chosen by the votes of the freeholders of each respective town, at their meeting in March then next following, and that each person so chosen should continue in the said office five years," as by the said act more fully appears, but no provision is made in the said act for the choice of registers after the said five years which are now near expired,

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the freeholders in each respective town within this province, at their meeting in March next, and every five years from thenceforth successively following for ever, at their several town meetings in

Choice of registers of deeds to be in March for ever.

March, shall be, and hereby are empowered and required to proceed to choose a register for each county respectively within the said province, qualified as in the said act is expressed, and that the person so chosen as aforesaid shall reside and keep his office daily open in the respective shire town of each county, and therein keep the books, records, files and papers to the said office belonging, and that all the other clauses, articles and paragraphs in the said act are hereby made and declared to be perpetual, and shall abide and remain effectual and in full force and virtue to all intents, constructions and purposes in the law, from henceforth and for ever hereafter; any law, usage or custom to the contrary notwithstanding.

Register to reside and keep his office in the shire town.

CHAPTER CXXXVIII.

AN ACT IN ADDITION TO AN ACT, MADE IN THE TWELFTH YEAR OF KING WILLIAM, INTITLED AN ACT DIRECTING HOW TAXES TO BE GRANTED BY THE GENERAL ASSEMBLY SHALL BE ASSESSED AND COLLECTED, AND FOR THE RATIFYING AND CONFIRMING THE PROCEEDINGS OF THE ASSESSORS OF PRECINCTS, DISTRICTS AND PARISHES, AND THE COLLECTING OF SUCH RATES AND TAXES AS MAY HAVE BEEN MADE BY SUCH ASSESSORS, ALTHOUGH NOT UPON OATH, AND TO EMPOWER COMMITTEES OF PRECINCTS, &C. TO CALL MEETINGS.

WHEREAS it is not expressly declared in and by the said act of the twelfth of king William, that the assessors of precincts, districts and parishes shall be upon oath, and some of the assessors legally chosen by and for some of the districts, parishes and precincts within this province, have not been under oath, and thereupon some difficulty has arisen as to the collecting and paying such parish and precinct taxes or rates,

SECT. 1. Be it therefore declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, all assessors, as well those of and for parishes, precincts and districts, shall be under the obligation of an oath to make their assessment just and equal, according to the rules in the law provided.

Assessors of parishes, &c to be under oath.

And that the committee chosen in precincts, districts and parishes, to manage their prudentials shall have the like power and authority to call and appoint meetings of their respective precincts, districts and parishes, as the selectmen of towns have to call and appoint town meetings. Parish committees to have power to call meetings.

SECT. 2. And be it further enacted, that all assessments hitherto made by any assessors, legally chosen for any precinct, parish or district within this province, although not upon oath, shall be and are legally held, deemed and made good and valid to all intents and purposes as if the same had been made upon oath, and all constables, collectors and persons concerned, are to conform themselves accordingly. Assessments made not under oath, to be held good.

Provided always, that such assessments that have been made, and the assessors not under oath, and the whole or any part thereof not collected, that in all such cases oath shall be made by those assessors living, that made the assessments, if thereunto required, that they acted impartially and according to their best skill and judgment; any law, usage or custom to the contrary notwithstanding. Proviso.

CHAPTER CXXXIX.

AN ACT TO PREVENT MISPENDING MONEY IN TAVERNS.

WHEREAS many persons are so extravagant in their expenses at taverns and other houses of common entertainment that it greatly hurts their families and makes them the less able to pay and discharge their honest, just debts, and are encouraged in this practice by the taverners, retailers and keepers of houses of entertainment, giving them too great credit, for remedy whereof,

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that if any innholder, retailer, ale-house-keeper, or common victualler, shall after the publication of this act trust or give credit to any person inhabiting in the same town where they are trusted, for victuals or drink, for more than ten shillings, such innholder, retailer, ale-house-keeper, or common victualler shall forfeit all such sums so trusted; and all actions to be brought for such debt or debts to be utterly excluded and barred; any law, usage or custom to the contrary notwithstanding. Taverner, &c. to forfeit debts for drink and victuals exceeding ten shillings.

CHAPTER CXL.

AN ACT FOR LIMITING AND REGULATING THE PROCEEDINGS OF THE JUDGES OF PROBATE, AND FOR GRANTING LETTERS OF ADMINISTRATION IN THE RESPECTIVE COUNTIES OF THE PROVINCE, IN THEIR GRANTING ADMINISTRATION ON SUCH ESTATES AS HAVE NOT BEEN FULLY ADMINISTERED ON ALREADY, COMMONLY CALLED ADMINISTRATIONS DE BONIS NON.

WHEREAS of late years it hath frequently happened, that the judges of probate in some of the counties of the province have granted letters of administration de bonis non, on the estates of persons deceased, even many years after the will of such person has been fully executed, or administrations on intestate esates made up and finished, under a pretence that such deceased person died seized of some right of commons in lands, or other real estate, whereby such administrators have given great disturbance to the respective towns or proprietors that own such lands, when at the same time it is not so much as pretended that there is any personal estate of the deceased left unadministered upon, or any debts remaining unpaid, for prevention whereof,

No administrations de bonis non to be granted, but where there are bona notabilia, or debts unsatisfied.

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that for the future no administration de bonis non shall be granted on the estate of any person deceased, unless oath be first made, that there are bona notabilia, or a personal estate of five pounds value unadministered on, or there appear to be debts of the like or greater value not satisfied.

Rights of commonages to go to the heirs.

SECT. 2. And be it further enacted by the authority aforesaid, that in all such cases where it is alleged, or may be supposed, that the deceased died seized of some rights of lands or commonages, the same being a real estate, administration shall not be granted thereon, but as the same descends and belongs to the heirs of the deceased, so such heirs and they only shall demand, prosecute or sue for the same; and all actions for such lands or real estate, brought or to be brought by administrators de bonis non, shall be dismissed and for ever barred in the law; any law, usage or custom to the contrary notwithstanding.

Actions of any others for the same barred.

CHAPTER CXLI.

AN ACT IN AMENDMENT OF AND ADDITION TO AN ACT, INTITLED AN ACT AGAINST RECEIVING STOLEN GOODS, MADE AND PASSED IN THE TENTH YEAR OF THE REIGN OF KING WILLIAM.

WHEREAS the penalty, provided in and by the act against the receiving stolen goods, hath not only proved ineffectual to deter persons from committing the said offence, but the party injured is often defeated of his just satisfaction by the offenders avoiding to make satisfaction by suffering corporal punishment,

Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that for the future all persons offending against the said law, and being thereof convict by due course of law, that shall not make restitution, as awarded, shall be ordered by the justices, or court that may have cognizance thereof, to make satisfaction by service, and be disposed of for that purpose, in like manner as is provided in case of theft, and be further punished by whipping, not exceeding twenty stripes, at the discretion of the said court.

Persons that receive stolen goods to be punished as in case of theft.

CHAPTER CXLII.

AN ACT IN ADDITION TO THE ACT FOR THE MORE EFFECTUAL PROVIDING FOR THE SUPPORT OF MINISTERS.

WHEREAS in and by an act made in the first year of the reign of her late majesty queen Anne, intitled an act for the more effectual providing for the support of ministers, the inhabitants of each district or precinct regularly set off from any town are empowered to choose assessors for the assessing and raising a maintenance and support for the minister of such district or precinct, and other precinct officers, but no provision or direction is yet made in the law for the first calling and assembling the inhabitants of any district, precinct or parish regularly set off from any town in the pro-

vince, for want of which many inconveniences have arisen and may still arise, for remedying whereof,

Justices of peace upon application to call precinct meetings.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that it shall and may be lawful for any justice of the peace in the county where such precinct, district or parish regularly set off as aforesaid is, and such justice is hereby empowered, upon application to him made by five or more of the freeholders of such precinct, district or parish, by writing under their hands, for calling of a meeting, to issue out a warrant for the assembling of such district, precinct or parish as aforesaid, directed to one of the freeholders, asking the same, requiring him to notify the freeholders and other inhabitants, qualified by law to vote in town affairs, of the meeting, and the time and place for the same, which notification shall be given in writing posted up in some publick place or places within the said district, precinct or parish, fourteen days before the day appointed for the meeting, and such and so many of the freeholders and other inhabitants as aforesaid, that are assembled and met accordingly, shall have power by a major vote to choose a moderator, as also a clerk to enter and record all votes and orders that from time to time shall be made and passed in the said precinct, district or parish meetings, who shall be sworn to the faithful discharge of his office as the law directs for the swearing of town officers, and further to choose a committee for calling of meetings of the precinct, district or parish for the future, and no other affair shall be transacted at any such meeting than what is expressed in the warrant or notification for such meeting.

Nothing to be passed but what is contained in the warrant.

CHAPTER CXLIII.

AN ACT FOR THE BETTER REGULATING THE ADMISSION OF TOWN INHABITANTS WITHIN THE PROVINCE OF THE MASSACHUSETTS BAY.

WHEREAS in and by an act or law of this province, made and passed in the eighth year of his present majesty's reign, intitled an act in addition to an act directing the admission of town inhabitants, made and passed in the 13th year of the reign of king William the third, it is therein enacted, "that upon the arrival of any ship or vessel in any port or harbour within this province transporting any passengers, servants or

others whatsoever, and before bulk be broken, or such passengers, servants or thers be suffered to land or come on shore, the master of such ship or vessel shall repair to the selectmen or treasurer of such town where no receiver of impost dwells, and give in a list or certificate of all the passengers, servants and others he has brought in his ship or vessel from beyond sea, with their circumstances, and merchandize they bring with them, as near as can be; and the master of such ship or vessel shall enter into sufficient bonds to the satisfaction of the said selectmen or treasurer of the town where the ship or vessel arrives, to save such town harmless from all manner of charge arising, or that may arise to the same town, by reason of such passengers, strangers, servants or others arriving among them,"

And whereas the true intent of the said act was to prevent the importation of poor, vicious and infirm persons, who might prove either a publick charge to the province in general, or to some particular town, without any design to lay a difficulty or discouragement upon trade,

Masters of ships to give security for their passengers.

SECT. 1. Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when any ship or vessel importing any passengers shall arrive in any port or harbour within this province, the master of such ship or vessel, before bulk be broken, or such passengers be suffered to land or come on shore, shall repair to the selectmen or treasurer of such town where no receiver of impost dwells, and give in a list or certificate of all the passengers he has brought in his said ship or vessel beyond sea, with their circumstances, and the merchandize they bring with them, as near as can be; and such passengers as can make it appear, that they then bring with them into this province effects to the value of fifty pounds, (not including necessary household goods and wearing apparel) as likewise all able bodied husbandmen, mariners, handicraftsmen, labourers and indented servants, provided they are not persons of vicious conversation, or ill fame, shall be, and hereby are admitted to land without the master's being subject to give security; but as for all others, the master of such ship or vessel shall enter into bond within five days after his arrival as aforesaid, with sufficient sureties to the satisfaction of the said selectmen or treasurer as aforesaid, in a sum not exceeding one hundred pounds for each passenger, to save such town harmless from all manner of charge arising or that may arise to the said town from such passengers for and during the term of five years, on pain of forfeiting the sum of one hundred pounds for the use of the poor of the town or place where such passengers shall be landed or set on shore; and in case any passenger or passengers shall give sufficient security for themselves to the acceptance of the

Persons exempted from having security for them.

Bond for five years.

Penalty for not giving security.

selectmen or treasurer as aforesaid, the master of the said vessel is exempted from giving bond so far as relates to them.

Lists and security to be given for passengers in coasting vessels, &c. on the same penalty.

SECT. 2. And be it further enacted by the authority aforesaid, that the master of every coasting vessel, wood sloop, fishing vessel or others, coming from any port or harbour of this or any neighbouring governments into Boston, or any other port or harbour within this province, shall within twenty-four hours after his arrival deliver to the receiver of impost, where such officers are, and where none are, to the selectmen or treasurer of the town, a perfect list or certificate of the christian and surname of all passengers brought in such vessel, which are not settled inhabitants of any town in this province, and their circumstances, so far as he knows, and give bond as aforesaid, on pain of forfeiting the sum of one hundred pounds for the use of the poor of the town or place where such passengers shall be landed, or put on shore; and the forfeitures in this act mentioned to be recovered by bill, plaint or information, by the selectmen or the major part of them, or the treasurer of such town where the ship or vessel arrives, in any of his majesty's courts of record within this province; any law, usage or custom to the contrary thereof notwithstanding.

The former act repealed.

And the aforerecited act in addition to the act directing the admission of town inhabitants, is hereby repealed and declared void.

CHAPTER CXLIV.

AN ACT TO ENABLE THE EXECUTORS OR ADMINISTRATORS OF CONSTABLES OR COLLECTORS DECEASED, TO SUE FOR AND RECOVER ANY ASSESSMENTS NOT COLLECTED BY THEM IN THEIR LIFE TIME.

WHEREAS the several constables and collectors that have rates or taxes committed to them to collect, stand by law indebted and are obliged to pay in the same to the several and respective treasurers or receivers of the rates and taxes within this province, but no provision is yet made in the law for the executors or administrators of any such deceased constables or collectors, who have not settled and made up their accounts, as by the said law is provided, to gather in or collect the same, or so much thereof as may happen to be unpaid,

Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as it shall so happen that any constable or collector within this province heretofore deceased, or that shall die before he shall have collected the several sums committed to him by lawful authority to collect of the inhabitants of this province, for their town, precinct, county or province tax, that then and in such case it shall and may be lawful for the executors or administrators of such deceased constables or collectors to levy and collect such sums of the inhabitants named in the lists to them severally committed, as upon the decease of such constables or collectors shall appear due or unpaid to them respectively; and such executors or administrators by themselves or their attorneys are hereby empowered to do, perform and execute all the powers granted by law to the several constables and collectors in such cases; any law, usage or custom to the contrary notwithstanding.

Executors or administrators of deceased constables or collectors empowered to collect rates.

CHAPTER CXLV.

AN ACT FOR EXPLANATION OF, AND IN SUPPLEMENT TO AN ACT, INTITLED AN ACT FOR HIGHWAYS, MADE IN THE FIFTH YEAR OF THE REIGN OF KING WILLIAM AND QUEEN MARY.

Whereas in and by an act made and passed in the fifth year of the reign of king William and queen Mary, intitled an act for highways, the inhabitants of each town respectively within this province are obliged, without reasonable excuse made, under certain penalties to attend by themselves or other sufficient person in their steads, or with their carts and teams, for the keeping in repair and amending from time to time all highways, &c. lying within the precincts of such town, upon convenient publick notice given them by the surveyors for the said work, as by the said act more fully appears, but forasmuch as there is no direction in the said act for stated limits to be observed by the said surveyors in repairing and amending the said highways, and great inconveniences have happened or arisen in many towns, for remedy whereof,

Selectmen &c. to appoint districts to the surveyors of highways.

Sect. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that the selectmen of each respective town within this province, with one or more justices of the

peace in those towns where such there are, or otherwise the selectmen by themselves, shall be and hereby are directed and empowered to appoint to the surveyors of such town their several divisions or districts for repairing and amending from time to time all highways lying within the same, which the said surveyors are hereby required to observe and conform unto.

And to the intent that all persons liable by the said act to work in the highways may have such notice to attend the said work as in and by the said act is provided,

Surveyors to notify persons to work in the highways.

SECT. 2. Be it further enacted by the authority aforesaid, that the surveyors respectively be and hereby are required (extraordinary casualties excepted) six days at least before the day appointed for providing materials and working in the highways to notify such persons to attend the said work, either by themselves or other sufficient persons in their stead, or with their carts and teams, the said notifications to be by writing under the hands of the said surveyors, signifying the time and place of attendance and to be left at the place of such persons' usual abode. And if any person being so notified make default of attending said work by himself or other sufficient person in his stead, or with his cart and team, as he shall be appointed, he shall forfeit the sum of five shillings for each day's neglect, and for default of his cart and team with a driver, ten shillings per diem, one moiety of the said forfeitures to be to the use of the surveyors, the other moiety to be to the use of the town, and to be recovered as in and by the said act is provided, any law, usage or custom to the contrary notwithstanding.

Proviso.

Provided, that this act shall not extend to the preventing or altering the practice in any town of defraying the charge of repairing or amending the highways by a rate or tax or any other method they have or shall agree upon, any thing herein contained to the contrary notwithstanding.

CHAPTER CXLVI.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT ENABLING SHERIFFS AND CONSTABLES TO REQUIRE AID, &C. MADE IN THE TENTH YEAR OF THE REIGN OF THE LATE KING WILLIAM.

WHEREAS, notwithstanding the provision made in the said act, some question has arisen upon the power of constables, whether they have any authority to convey any persons by

them apprehended, in pursuance of any lawful warrants or writs to them directed, any further than through their own towns and precincts,

Be it declared and enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that the constable or constables of the several towns within this province, have full power and authority in the execution of the several warrants or writs, to them directed by lawful authority, to convey as well any prisoner or prisoners as things that they may take into their custody, either to the justice issuing such warrant or writ, or the common gaol of the county where such constable is an inhabitant, according as in the writ or warrant may be directed.

Constables' authority in the execution of writs and warrants.

CHAPTER CXLVII.

AN ACT TO EMPOWER THE SHERIFFS, CONSTABLES AND OTHER OFFICERS OF JUSTICE IN THE NEIGHBOURING PROVINCES AND COLONIES, AS WELL TO PASS AND REPASS, AS TO CONVEY SUCH PERSONS OR THINGS AS MAY BE IN THEIR CUSTODY, ON THE SERVICE OF ANY WRIT, WARRANT OR OTHER PROCESS, BY AND THROUGH ANY OF THE ROADS OR PUBLICK WAYS LYING IN OR LEADING THROUGH ANY OF THE TOWNS OR LANDS OF THIS PROVINCE.

WHEREAS many of the towns of this province and the neighbouring provinces or colonies of New-Hampshire, Connecticut and Rhode-Island, and the publick roads leading to and from one another are so intermixed, that the officers of justice of the respective provinces and colonies in the execution of writs, warrants, and other processes are oftentimes obliged (the roads or direct way so leading) to pass and even to convey prisoners through towns or lands not belonging to or under the jurisdiction of the province or colony unto which the sheriff, under-sheriff, constables or other officers of justice, executing such writ, warrant or other process belongs, and where the writs or warrants are returnable, but to the neighbouring colony or province, whereupon some dispute, difficulty or inconvenience might arise, as well to the prejudice of the publick good, as to the damage of private persons, for remedy whereof,

Sheriffs, &c. of the neighbouring provinces allowed to pass and repass in this province, &c.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that the sheriffs, under-sheriffs, constables, or other officers of justice of the neighbouring provinces or colonies, with their assistants, in the execution of any writs, warrants, or other process issuing from and returnable to their respective provinces or colonies, may and shall have full liberty, power and authority to pass and repass, and also to convey such persons or things as they have in their custody by virtue of any writ or warrant as aforesaid, in or by any of the roads or ways lying in or leading through any of the towns or lands of this province, in as full and ample manner as the officers of justice of this province do use and exercise in the discharge of their duty and office; and all persons insulting or obstructing such officers of justice of the neighbouring colonies or provinces in the due execution of their office, as they are passing through any of the roads or lands of this province, shall be subject to the same pains and penalties as is provided for the protection of the proper officers of justice within this province.

Penalty for obstructing them.

CHAPTER CXLVIII.

AN ACT IN ADDITION TO THE SEVERAL ACTS FOR THE MORE SAFE KEEPING THE REGISTRY OF DEEDS AND CONVEYANCES OF LANDS.

WHEREAS in an act made and passed in the first year of his present majesty's reign, intitled an act for the more safe keeping the registry of deeds and conveyances of lands, which act was temporary, but made perpetual by another act made in the seventh year of his majesty's reign, intitled an act in addition to an act intitled an act for the more safe keeping the registry of deeds and conveyances of lands, it is among other things enacted, "that in case of non-acceptance, death or removal of any person elected to be register of deeds, in any of the counties of this province, two or more of his majesty's justices within such county, quorum unus, be empowered to grant out their warrants directed to the selectmen of the several towns within such county, ordering them forthwith to convene the freeholders of the respective towns, and proceed to the choice of some other meet person, the said votes to be

brought in as in the election of county treasurer," which is to the next court of general session of the peace, by which method a vacancy may happen in the said office for some months, to the great damage and risk as well of particular persons as of the county in general, for remedy of which inconvenience,

Warrants for choosing a register of deeds to be returned to the justices issuing them, in case of the death, &c. of the register.

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when any two or more of his majesty's justices of the peace, quorum unus, within any of the respective counties of this province, living in or near the shire town, shall in case of the non-acceptance, death or removal of any person elected register of deeds for such county, grant out their warrants, directed to the selectmen of the several towns within such county, ordering them forthwith to convene the freeholders of their respective towns, and proceed to the choice of some other meet person, as aforesaid, the said justices shall make their warrants returnable to themselves at a certain day, as soon as conveniently may be, ordering the said selectmen to seal up the votes for register, and return them together with the said warrants; and the abovesaid justices shall at the same time give out their notifications to the other justices of such county of their proceedings herein, desiring them to meet upon the day appointed for the return of the said warrants, at some certain place in the shire town, and the major part of the justices of such county being met together on such day, the said votes for register shall be opened and sorted in presence of the said justices, and the person having the most votes shall be register of deeds for such county, until the time appointed by law for the election of registers throughout this province.

Clerk of the pleas to receive deeds, &c. in case of a vacancy in the register's office.

SECT. 2. And be it further enacted by the authority aforesaid, that immediately upon a vacancy in the office of register of deeds in any county within this province, the clerk of the inferiour court of common pleas, being first sworn before two of his majesty's justices of the peace, quorum unus, for the faithful discharge of this trust, shall take into his custody the several books wherein the deeds and conveyances of lands are registered, together with the deeds and other papers lying in the said office, and that the said clerk be and hereby is empowered to receive the deeds and other instruments brought to be registered, and he shall note upon them the time of their being received, and the record shall bear date accordingly, for which he shall be allowed six pence for each deed, and no more; and upon the appointment of a new register as aforesaid, he shall deliver up the said books, deeds and papers into his hands; any law, usage or custom to the contrary notwithstanding.

The clerk's fee for receiving deeds, &c.

CHAPTER CXLIX.

AN ACT IN FURTHER ADDITION TO THE SEVERAL ACTS OR LAWS OF THIS PROVINCE, RELATING TO THE OFFICE AND DUTY OF A CORONER.

WHEREAS by the aforesaid acts a coroner is not empowered to constitute or appoint a deputy or deputies under him, to serve such writs as he is enabled by law to serve, so that by reason thereof there may be a failure or delay of justice, for prevention whereof,

Coroners empowered to appoint deputies for serving writs, &c.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, it shall and may be lawful for the several coroners within this province to constitute and appoint one or more deputies, for and within their respective counties; and the persons so deputed and sworn are hereby authorized to serve and execute all such writs and process as shall be directed to the coroner or his deputy, wherein the plaintiff, defendant or complainant shall be a sheriff, under-sheriff or deputy of any of the counties within this province; any law, usage or custom to the contrary notwithstanding.

CHAPTER CL.

AN ACT IN ADDITION TO, AND FOR RENDERING MORE EFFECTUAL AN ACT, MADE IN THE TENTH YEAR OF THE REIGN OF KING WILLIAM THE THIRD, INTITLED AN ACT FOR PREVENTING OF TRESPASSES.

WHEREAS the act or law already made for the preventing trespasses hath been found ineffectual for that purpose, so that a further provision is necessary to be made,

Fines for cutting trees, timber, underwood, &c. without license.

SECT. 1. Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that no person or persons do or shall cut, fell, destroy or carry away any trees, timber, wood, or underwood whatsoever, standing, lying or growing on the land of any others, or off or from

the commons of any town, other than that to which he or they belong, or within the same town, having no right or privilege there, without leave or license from the major part of the propriety of such commons, or the owner or owners of the land whereon such trees, timber, wood or underwood was standing, lying or growing, on pain that every person so cutting, felling, destroying or carrying away the same, or that shall be aiding or assisting therein, shall for every such trespass forfeit and pay to the party or parties injured or trespassed upon, the sum of forty shillings for every tree of one foot over, and for all trees of greater dimensions three times the value thereof, besides forty shillings as aforesaid, and twenty shillings for every tree or pole under the dimension of one foot diameter, and for other wood or underwood, treble the value thereof, which several penalties, forfeitures and damages shall and may be recovered by action, bill, plaint, or information upon conviction of the trespasser or trespassers, as is hereafter specially provided and enacted, before any justice of the peace in the county where the trespass is committed, if the penalty or damage exceed not forty shillings, but if it be above that value, then before the court of common pleas in the same county.

Fine for throwing open fences, gates, &c.

And for carrying away stones, ore, gravel, &c.

SECT. 2. And be it further enacted, that if any person or persons shall throw or leave open any bars, gates, fence or fences, belonging to or inclosing any lands held in propriety or common, or belonging to any particular person or persons, within any town in this province, or that shall dig up or carry away any stones, ore, gravel, clay, sand, turf or mould, roots or plants, belonging to the proprietors of any common lands, or to any particular person or persons, as aforesaid, shall for every such trespass, upon conviction thereof, as in and by this act is hereafter provided, forfeit and pay treble damages, and also a sum not exceeding five pounds to the party or parties injured thereby, according to the nature and aggravation of the trespass, to be recovered in manner as aforesaid.

And forasmuch as it is very hard and difficult to detect and convict any trespasser or trespassers against this act, in the ordinary course and method of the law, by reason the trespasses are generally committed where positive evidences can scarcely ever be had,

Manner of conviction of the aforesaid crimes.

SECT. 3. Be it therefore further enacted by the authority aforesaid, that in case any dispute arise upon any action, bill, plaint or information brought, as aforesaid, where the plaintiff, complainant or informer shall charge the defendant in trespass for cutting, felling, destroying or carrying away any particular tree or trees, parcels of timber, wood, or underwood, or for throwing down or leaving open any fence or fences, gates or bars, or for digging up or carrying

away any stones, ore, gravel, clay, sand, turf or mould, roots or plants, off or from any such land, as aforesaid, or of being aiding or assisting therein, then and in such case, if the plaintiff, complainant or informer, or his agent or attorney, shall make oath bona fide that there hath been cut, felled, destroyed or carried away such and so many trees, parcels of wood or underwood, or that any fence or fences, gates or bars have been thrown down or left open, or that any stones, ore, gravel, clay, sand, turf or mould, roots or plants hath been dug up or carried away, as mentioned in the writ, and that he suspects the defendant to have committed the said trespass, and although the plaintiff, complainant or informer, or his agent or attorney may not be able to produce any other evidence thereof, than such circumstances as render it highly probable in the judgment of the court or justice before whom the trial is, then and in every such case, unless the defendant shall acquit himself upon oath, to be administered to him by the court or justice that shall try the cause, the plaintiff shall recover against the defendant damages and costs; but if the defendant shall acquit himself upon oath as aforesaid, the court or justice may and shall enter up judgment for the defendant to recover against the plaintiff double his costs occasioned by such prosecution.

And whereas several ill-minded persons of late, as well in the night time as the day, being disguised and painted, have pillaged and committed great spoil in cedar swamps, and other lands, and have laid open the inclosures of particular persons, by pulling down or destroying the fences about them, not only to the great damage of the proprietors, or persons interested, but also to the injury of the publick,

Punishment for persons disguised or painted that commit trespasses.

SECT. 4. Be it therefore enacted by the authority aforesaid, that if any person or persons having his or their face or faces blacked, painted or any ways disguised, shall either by day or night commit any of the trespasses aforesaid, or shall beat and abuse any of his majesty's good subjects, and be thereof convicted by due course of law, such person so trespassing shall over and above the damages aforementioned in this act, be whipped at the publick whipping post, not exceeding twenty stripes, as the nature of the trespass may require; any law, usage or custom to the contrary notwithstanding.

Proviso.

Provided, that nothing in this act shall be construed so as to debar or hinder the surveyors of highways of doing any thing necessary and convenient in and about their duty, as by law empowered.

This act to be in force from the seventh day of August next.

CHAPTER CLI.

AN ACT TO PREVENT PERSONS FROM RIDING WITH NAKED SCYTHES.

WHEREAS divers persons, going to and returning from their labour, do frequently ride with naked scythes on highways or through lanes and alleys, which may prove hurtful to themselves and others, for prevention whereof,

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that if any person or persons from and after the publication of this act shall ride with a naked scythe on the highways or through any lanes or alleys, such person or persons shall forfeit and pay for every breach of this act, upon conviction thereof before any of his majesty's justices of the peace, the sum of ten shillings, one half thereof to the poor of the town where such offence is committed, and the other half to the informer that shall prosecute or sue for the same.

No person to ride with naked scythes on the highways, &c.

CHAPTER CLII.

AN ACT FOR THE RESTRAINING AND BETTER REGULATING APPEALS FROM THE COURT OF GENERAL SESSIONS OF THE PEACE, AND INFERIOUR COURT OF COMMON PLEAS WITHIN THE ISLAND OF NANTUCKET.

WHEREAS by the act for establishing a superiour court of judicature, court of assize and general gaol delivery within this province, it is provided, "that the trial of all matters and causes by appeal from the court of general sessions of the peace, or inferiour court of common pleas respectively within the said island of Nantucket, or by writ of error relating to any judgment given in the said inferiour court, shall be in the superiour court of judicature, court of assize and general gaol delivery, to be held within the counties of Suffolk or Middlesex," and whereas there are two superiour courts of judicature, courts of assize and general gaol delivery held in each of the said counties of Suffolk and Middlesex in a year, one whereof is held at Charlestown for the

said county of Middlesex on the last Tuesday of January, and the other at Boston for the county of Suffolk on the second Tuesday of February, and all appeals and other matters to be brought forward from the inferiour court of common pleas and court of general sessions of the peace held in the month of October at the said island of Nantucket lie to one of the said superiour courts in January or February as aforesaid, which hath been found to be very inconvenient, for that oftentimes, by reason of the severity of the weather at that season, it is very difficult and sometimes impossible for the parties and others concerned to come to either of the said superiour courts, by means whereof such persons may lose the benefit of their appeals or other matters that may be there depending, wherefore, for the ease and benefit of the inhabitants of the said island of Nantucket,

Appeals from Nantucket to Boston.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that the trial of all matters and causes by appeal from the court of general sessions of the peace and inferiour court of common pleas respectively within the said island of Nantucket, or by writ of error relating to any judgment given in such inferiour court, shall from henceforth be in the superiour court of judicature, court of assize and general gaol delivery to be held at Boston within and for the county of Suffolk on the second Tuesday of August; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLIII.

AN ACT IN ADDITION TO AN ACT FOR REGULATING FERRIES.

Whereas sundry persons of late, notwithstanding the provision already made by law, do presume to transport passengers over and across the several stated ferries within this province, having no right or authority so to do, in prejudice of those who are assigned and authorized to that service, and therefore justly intitled to the sole benefit of the said ferries, for prevention whereof,

Penalty for persons not authorized to transport passengers across any ferry for money.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that if any person or persons shall from henceforth presume to keep a ferry, or transport passengers over or across any stated ferry within this province, so as to

demand or receive pay, having no right or authority so to do, shall for every such offence pay a fine of twenty shillings, the one half to his majesty for and towards the support of this government, the other half to him or them that shall inform and sue for the same before one of his majesty's justices of the peace, or at the court of general sessions of the peace in such county where the offence may be committed, and be further liable to pay such damages as may or shall accrue to the person or persons assigned and authorized to keep any such stated ferry or ferries.

Liable to pay damages to those that keep the ferry.

CHAPTER CLIV.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT TO ENABLE TOWNS, VILLAGES AND PROPRIETORS IN COMMON AND UNDIVIDED LANDS, &C. TO SUE AND BE SUED, MADE IN THE SIXTH YEAR OF THE REIGN OF KING WILLIAM AND QUEEN MARY.

WHEREAS, in and by the said act, "all persons, towns, villages, precincts, trustees for schools, and proprietors in common and undivided lands, grants and other estates or interests whatsoever, are empowered to sue, commence and prosecute any suits or actions in any court proper to try the same, and in like manner to defend all such suits and actions as shall be commenced against them or any of them, &c." and whereas by the said act there is no provision made for the enabling any such proprietors to raise money for the carrying on or defending such actions, or for any other publick use in such propriety, for want whereof many such proprietors suffer great loss and damage in their proprieties, and lose the benefit of the said law, and whereas the time of fourteen days for the serving of writs, before the day of the sitting of the court hath by experience been found too short a time in such actions and suits as are brought against any such towns, precincts, villages and proprietors, as aforesaid,

For the remedying whereof, and the enabling proprietors in common and undivided lands to raise monies for the carrying on and prosecuting or defending any such actions or suits, or for managing any other publick affairs in such proprieties,

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that it shall and may be lawful to

Proprietors of common lands empowered to raise money.

and for the proprietors of any common and undivided lands, or the major part of them, according to the interests present, by themselves or their lawful attorneys, at any proprietors meeting that shall hereafter meet upon legal warning, to order the raising of any suitable sum or sums of money that shall by them be thought sufficient to carry on and prosecute or defend any actions or suits that may be brought by or against them, or for the carrying on or managing any other publick affairs relating to such proprieties, and to appoint a suitable number of persons belonging to such propriety to proportion such sum or sums, as shall be thought necessary to be raised for the ends and uses aforesaid, upon the proprietors of such common and undivided lands according to their several interests therein, and to appoint a collector or collectors to gather in and collect the same, which collector or collectors shall be and hereby are fully authorized and empowered to levy and collect the sum or sums set and apportioned for such proprietors to pay in the same manner as constables of towns within this province are empowered to levy and collect the publick rates or taxes, and to pay in the same to the proprietors or their clerk, who is hereby empowered to grant warrants for levying and collecting such assessment, at such time as shall be by them appointed for payment thereof, and such clerk shall be accountable to the proprietors therefor. The person or persons so assessing the said proprietors, and the collector or collectors that shall be appointed for the gathering and collecting the sum or sums granted and agreed upon by the said proprietors to be assessed and collected as aforesaid, shall be under oath for the true and faithful performance of their services respectively, which oath shall be administered to them as the law provides for swearing town officers.

To be collected in the same manner as the province tax.

Assessors to be under oath.

Writs to be served on towns, proprietors, &c. thirty days before the court.

Sect. 2. And be it further enacted by the authority aforesaid, that when it shall happen suit shall be brought against any towns, precincts or villages, or against the proprietors of any common or undivided lands, the plaintiff bringing forward such suit, shall cause the clerk of such towns, villages, precincts or proprietors, or one or more of their principal inhabitants or proprietors, to be served with a copy of the writ or summons at least thirty days before the day of the sitting of the court, to which the same shall be returnable; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLV.

AN ACT TO DISABLE THE SEVERAL JUDGES FOR THE PROBATE OF WILLS AND GRANTING ADMINISTRATION IN THE RESPECTIVE COUNTIES OF THIS PROVINCE FROM SITTING AS JUDGES IN CIVIL ACTIONS, DEPENDING ON, OR RELATING TO ANY SENTENCE OR DECREE, BY THEM MADE IN THEIR OFFICE AFORESAID.

WHEREAS several of the judges of the probate of wills and for granting administration on intestate estates within this province are or may be justices either of the superiour court of judicature, or of the inferiour court of common pleas, before whom oftentimes actions are brought and determined that depend upon or relate to the decree or sentence of such judges of probate, and it being inconvenient that such judge of probate should have a voice in judging or determining such cases,

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, no judge for the probate of wills and granting administration on intestate estates within this province shall be allowed or admitted to have a voice in judging or determining, nor shall he be admitted to plead or act as an attorney, in any civil action whatsoever, which may depend on or have relation to any sentence or decree made or passed by him in his office aforesaid; any law, usage or custom to the contrary notwithstanding.

No judge of probate to be judge or attorney in another court in any cause wherein he has passed a decree.

CHAPTER CLVI.

AN ACT IN ADDITION TO THE ACT, INTITLED AN ACT RELATING TO EXECUTORS AND ADMINISTRATORS.

WHEREAS in and by an act made in the second year of the late queen Anne, intitled an act relating to executors and administrators, among other things, it is enacted, "that any executor being a residuary legatary may bring his action of account against his co-executor or executors of the

estate of the testator in their hands, and may also sue for and recover his equal and rateable part thereof, and any other residuary legatary shall have like remedy against the executors," and whereas it often happens that such executor or executors move or dwell out of the province and leave the estate of the testator in the hands and under the management of their agent or attorney, whereby the co-executor and residuary legatee lose the benefit of the said act, by reason of which manifest wrong is done, for remedy whereof,

Agent of executors out of the province liable to suits, &c.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that every agent or attorney of any executor or executors, removed or dwelling out of this province, shall be liable and subject to every action and demand by the co-executor or executors or residuary legatee, or any other person, so far as said agent or attorney shall have received of the estate of the deceased into his own hands.

Proviso,

Provided always, that the action be brought within one year from the time of the agent's or attorney's receiving such effects, and not after; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLVII.

AN ACT TO ENABLE GUARDIANS TO JOIN IN THE PARTITION OF LANDS OR OTHER REAL ESTATE WHEREIN MINORS ARE CONCERNED.

WHEREAS the partition of lands or other real estate among the persons concerned, though much desired and of great advantage, is often hindered and delayed by reason of infants or persons under age being interested in such estate, to the damage as well of the infants as others therein concerned, for remedy whereof,

Guardians empowered to join in the partition of lands, &c.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that it shall be in the power of the guardian or guardians of any infants concerned in any real estate that is common or undivided, upon application made to and leave had from the superiour court of judicature, holden for and within the respective counties of this province where such lands or real estate lie, either by such guardian or guardians, or the other partners interested, to join in and make parti-

tion of such real estate as aforesaid to and among them; provided such partition or division be made upon oath by five freeholders, or the major part of them, to be appointed by the justices of the said superiour court, and a return of such partition to be made to the clerk's office of the said court, and there to be recorded, which partition or division, made in manner as aforesaid, shall be valid and effectual to all intents and purposes in the law; any custom, usage or law to the contrary notwithstanding.

CHAPTER CLVIII.

AN ACT TO ENABLE EXECUTORS AND ADMINISTRATORS TO PROSECUTE OR DEFEND ANY SUITS THAT ARE DEPENDING, OR HEREAFTER SHALL DEPEND UPON APPEAL, WHEREIN THE TESTATOR OR INTESTATE WAS OR SHALL BE APPELLANT OR APPELLEE.

WHEREAS it often happens that, after causes have been heard and tried at the inferiour courts of common pleas within the several counties of this province, the party who is dissatisfied with the judgment given doth appeal therefrom to the next superiour court of judicature to be holden within and for the same county where the action has been first tried, and many times it comes to pass that either the appellant or the appellee dies before the sitting of the superiour court appealed to, by reason whereof the great and general assembly of this province are often troubled with the hearing of petitions from the executors or administrators, or the surviving party, and spend much of their time in passing resolves for their having liberty to begin their suit anew, or for other relief as the matter may require, and by means of the death of either party, pending the appeal, the creditor for a long time hath been kept out of his just dues, and the proprietors of houses and lands kept out of possession thereof, for want of a more speedy remedy in the law in such cases,

Executors and administrators empowered to prosecute and defend ac-

SECT. 1. Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that in case of the death of any party, either the appellant or the appellee, before the sitting of the superiour court appealed to, the executor or executors, administrator or administrators of such

tions commenced before their being in such a capacity.

deceased party who was appellant or appellee shall have full power to prosecute or defend any such suit or action, as shall be depending at the death of the testator or intestate, from court to court until definitive judgment; and the justices of the superiour court before whom such cases are triable are hereby directed and empowered to hear and determine all such cases, proceed to judgment and award execution accordingly; and when it shall so happen that either the appellant or the appellee be taken away by death, sooner than the time of the sitting of the court appealed to, so that the executor or administrator of the deceased hath not suitable time to prepare for managing the cause depending, or to become duly qualified to prosecute or defend the same, in such case it shall and may be lawful for the justices, before whom the cause is to be heard and tried, to suspend the hearing and trying of every such cause until the next term after.

Court's power to grant imparlances, &c.

Judgment to be made up against the estate of the deceased, &c.

SECT. 2. And be it further enacted by the authority aforesaid, that if by the verdict of a jury, default or neglect of prosecuting such appeal or otherwise, judgment pass against the executor or administrator of any person deceased, the justices of the superiour or inferiour courts respectively are hereby authorized and directed to make up judgment against the estate of the deceased in their hands and under the administration of the executor or administrator, as it should have been in case the suit had been originally commenced by or against such executor or administrator in that capacity; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLIX.

AN ACT IN FURTHER ADDITION TO AND FOR RENDERING MORE EFFECTUAL AN ACT, MADE IN THE TENTH YEAR OF THE REIGN OF KING WILLIAM THE THIRD, INTITLED AN ACT FOR PREVENTING OF TRESPASSES.

WHEREAS in the act made in the twelfth year of his present majesty's reign, entitled an act in addition to and for rendering more effectual an act made in the tenth year of the reign of king William the third, intitled an act for preventing of trespasses, good provision is made to prevent cut-

ting, felling or destroying of trees, timber, wood, underwood, breaking fences, digging ore, clay, &c. but no provision is therein made against cutting and destroying of grass and sedge growing on the common lands of any town or proprietors, or destroying and carrying away any hay lying on the same, nor against taking away from any wharf or publick landing place any posts, rails, plank, boards, slitwork, cooper stuff, shingles, wood or timber,

Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that if any person or persons after the publication of this act shall presume to cut or carry away any sedge, grass, hay or corn, standing, lying, or being on any land, belonging to any town, proprietors or particular persons, where he or they so cutting or carrying away have no right, or shall take away from any wharf or common landing place any posts, rails, plank, boards, slitwork, cooper stuff, shingles, wood or timber, or any other lumber or goods, which he or they have no right to take, shall for every such trespass forfeit and pay the party or parties so trespassed upon treble damages, to be sued for and recovered in any court proper to try the same, after the same manner of conviction, and by the same rules and methods as is directed in and by the aforesaid additional act for preventing trespasses, unless such person or persons have first obtained leave or license from the major part of such town or proprietors at a meeting orderly warned and assembled for that purpose, or from any particular person or persons who are in possession of such lands or wharves.

Trespass in cutting or carrying away grass, hay or corn.

Or posts, rails and other lumber or goods.

Penalty.

Provided nevertheless, that this act or any clause therein shall not be understood or construed so as to bar or hinder any town, proprietors, or particular persons from prosecuting any other person or persons for theft, who shall carry away any hay or corn severed from the freehold, or such as shall take from any wharf or common landing place any posts, rails, plank, boards, slitwork, cooper stuff, shingles, wood or timber, or other lumber or goods, which he or they have no right to take, but that in such case any town proprietors or particular persons may proceed in such manner as if this law had not been made; any law, usage or custom to the contrary notwithstanding.

Proviso that prosecution for theft be not hereof barred.

CHAPTER CLX.

AN ACT TO ENABLE PROPRIETORS OF COMMON AND UNDIVIDED LANDS TO MAKE ORDERS AND ANNEX PENALTIES THEREON, FOR THE BETTER REGULATING AND MANAGING THEIR PROPRIETIES.

WHEREAS it so happens that in some towns or proprieties within this province there are some parcels of upland, sedge ground or meadow ground, which lie under such circumstances as render a division of the same very difficult and disadvantageous, which notwithstanding would be of considerable use and benefit to the owners, if the same could be improved under due regulations, but there being no law of this province to enable proprietors to make orders and annex penalties to prevent disorder, evil minded persons take such measure as sometimes render the regular and orderly improvement of such lands very difficult, if not impossible,

Proprietors of common lands empowered to make orders and annex penalties.

Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that proprietors of common and undivided lands, at a meeting warned as the law directs and assembled, shall and may have power by a major vote of the persons then assembled (said votes to be collected according to each one's interest) to make and pass such orders for fencing, improving and timing the improvement of such undivided lands or meadows as by them shall be thought proper and convenient, and to annex penalties on the breach and non-observance of such orders, provided such penalty doth not exceed fifteen shillings for one offence; provided also that such order so made be allowed and approved of by the court of general sessions of the peace for the county where the land lies, and is not repugnant to the general laws of the province, that then such order or orders shall have such force and effect, as that such proprietors thereupon by their treasurer, agent or agents may recover the penalty thereto annexed against the breakers or non-observers thereof, in any court proper to try the same, such penalty to be disposed of as the proprietors shall order or direct; any law, usage or custom to the contrary notwithstanding.

Proviso.

CHAPTER CLXI.

AN ACT TO PREVENT COPARCENERS, JOINT TENANTS AND TENANTS IN COMMON, FROM COMMITTING STRIP AND WASTE UPON THE LANDS BY THEM HELD IN COMMON AND UNDIVIDED.

WHEREAS it often happens that persons, having an interest or share in lots of land not subdivided to and among the interested, do privately and without the knowledge of the rest enter into and upon the same, cut down or carry away the trees for timber and other valuable trees or wood, or make other strip and waste thereon, whereby the rest of the partners or interested are stripped of their just rights and shares thereof, for prevention of the same for the future,

Coparceners, joint tenants and tenants in common, not to make strip, &c. without giving notice, &c.

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, no person or persons whatsoever, having a right or interest in any lot or lots of land not subdivided, but lying in common, shall or may fell, cut down, destroy or carry away any trees for timber, or other trees, timber, wood or underwood whatsoever, standing, growing, or lying on such lands, or make any other strip or waste whatsoever, without first giving notice in writing under his or their hands unto all the persons interested therein, or to his or their agents, factors or attorneys, forty days beforehand, setting forth that he or they have occasion for, and shall enter upon and improve such lot or lots of land not subdivided as aforesaid, under the like penalties and forfeitures as are provided by an act, intitled an act in addition to and for rendering more effectual an act, made in the tenth year of the reign of king William the third, intitled an act for preventing of trespasses, to be recovered before any one of his majesty's justices of the peace, or in any of his majesty's courts of record, within the county where such offence shall be committed, as the value of the damage may be, by action, bill, plaint or information, to be brought and prosecuted by any one or more of the persons interested, in the name and behalf of the rest, who are hereby authorized and empowered so to do, one moiety of the aforesaid penalties and forfeitures to be to and for the use of such person or persons who shall inform and sue for the same, and the other moiety to and for the use and benefit of the rest of the proprietors or persons interested as aforesaid.

Penalty.

And whereas upon suits brought for the partition of lands, tenements or hereditaments held in common as aforesaid, the party or parties against whom such suits are brought, who oftentimes have but a small interest therein, before a final judgment can be obtained, and a division made of the same according to law, do frequently cut down, destroy and carry away considerable quantities of the wood, timber and trees growing on such land, and do otherwise hurt and damnify the same lands, tenements and hereditaments, to the great prejudice of the rest of the owners thereof, especially where they are wood lands, who are without any remedy at the common law,

No person to make strip, whilst suit for partition is depending.

SECT. 2. Be it therefore enacted by the authority aforesaid, that when a writ shall be brought and served at the suit of any one or more persons interested in any lot or lots of land, tenements or hereditaments held in common or undivided, for a division and partition of the same, no person or persons whatsoever having a right to or interest in any such lands, tenements or hereditaments, or holding any part or share of the same in common as aforesaid, whilst such suit is depending, shall or may fell, cut down, destroy or carry away any trees, timber, wood, or underwood whatsoever, standing, growing or lying on such lands, or shall otherwise hurt or damnify any such lands, tenements, or hereditaments, until partition can be made of the same according to law, on pain that every person or persons so offending shall incur the like forfeitures and penalties provided in the aforesaid act, intitled an act in addition to and for rendering more effectual an act, made in the tenth year of the reign of king William the third, intitled an act for preventing of trespasses, to be recovered by the person or persons informing or suing for the same, in manner as aforesaid, to and for such uses as are before mentioned and declared.

Penalty.

Writ of partition to be prosecuted to effect.

Provided always, that the person or persons bringing forward such writ shall prosecute the same to effect, and after obtaining judgment shall cause execution to be served for partition of such estate, as soon as the law will admit thereof, and it may conveniently be done.

Manner of conviction.

SECT. 3. And be it further enacted by the authority aforesaid, that in all offences against this act the offender or offenders shall be liable to a conviction, in the same manner as is already provided in the act before mentioned.

CHAPTER CLXII.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT FOR HIGHWAYS.

WHEREAS in and by an act, made and passed in the fifth year of the reign of king William and queen Mary, intitled an act for highways, provision is made to empower the selectmen of each town respectively, either by themselves or others, to lay out particular or private ways for such town only as may be thought necessary, but no provision is made what methods shall be taken in order to bring them to record, so that there seems to be apparent danger of such ways being laid out and committed to record without the knowledge of the town or towns respectively, which hath and may prove of very ill consequence; for remedy whereof,

SECT. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as the selectmen, or any by their order for the future, shall lay out any private or particular way or ways in and for any town or towns within this province, such selectmen shall make report to the town in which such ways are laid out, at their annual town meeting in March, notice of which report shall be inserted in the warrant for calling such meeting, and no such way or ways shall be esteemed established private ways for such town, nor committed to record, unless such town, at a town meeting warned as aforesaid, shall by a major vote allow and approve thereof.

Notice to be given the towns of private ways in March meeting.

All private ways to be allowed by the town.

SECT. 2. And be it further enacted by the authority aforesaid, that it shall be in the power of any town or towns within this province, at a legal town meeting, to alter or discontinue any particular or private way or ways within their respective towns, which have been heretofore laid out and improved as such, when it shall appear to such town or towns that they are unnecessary for the common good; and all such particular or private ways, after so ordered by the major vote of such town or towns respectively to be discontinued or altered, shall no longer be esteemed as particular or private ways for such town or towns.

Private ways may be altered by the town.

Saving always to any person or persons who shall be aggrieved or damnified by the altering, discontinuing or laying out of any such way or ways as aforesaid, a liberty of applying for remedy to the justices of the general sessions of the peace within the county where such alterations or layings out are made, who are hereby empowered and directed to

Saving a liberty of appeal.

inquire into and determine the matter by a jury thereunto appointed, as well with respect to the necessity and convenience by such discontinuance, laying out or alteration as aforesaid, as to the damage that may happen or accrue to any particular person or persons thereby, and thereupon to award damages to the party or parties injured against such town; unless it appears that such particular person or persons have no just cause of complaint, that then such particular person or persons shall pay all such cost and charge as shall or may arise by any such application to the sessions.

Application to be made within a year.

Provided such application be made to such justices at their general sessions of the peace within twelve months after such ways are altered or discontinued as aforesaid, and not otherwise; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLXIII.

AN ACT FOR THE MORE SAFE AND EASY PROSECUTING WRITS OF TRESPASS AND EJECTMENT.

WHEREAS sometimes the defendants in actions of trespass and ejectment are arrested, and held to great and excessive bail, where no just cause can be for it, and sometimes the plaintiffs have their writs abated, and the trial of their right unreasonably delayed, under pretence that all the tenants are not sued, for prevention whereof,

In writs of trespass and ejectment, only the defendant's bond to be required.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that whensoever any person shall be arrested upon a writ of trespass and ejectment, the defendant's own bond and no other shall be required for his appearance to answer the same.

Defendants to answer for no more than they are in possession of.

And whenever any person or persons shall be sued in ejectment for any lands, tenements or hereditaments, they shall be holden to answer for so much or such part of the premises demanded as they then hold, or are in possession of, which they shall distinguish and set forth by their plea, and disclaim in the rest; and if any of them disclaims in the whole, and the plaintiff cannot prove his the defendant's possession of the premises, or any part thereof, he shall recover his costs; any law, usage or custom to the contrary hereof in any wise notwithstanding.

CHAPTER CLXIV.

AN ACT IN FURTHER ADDITION TO THE SEVERAL ACTS RELATING TO TRESPASSES.

WHEREAS the several acts or laws already made for the preventing of trespasses have been found ineffectual for that purpose in some cases, so that a further provision is necessary to be made,

Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that no person or persons do or shall presume to take up, break down or damnify any dam or dams made use of for the inclosing of water improved for the benefit of any mill or mills, flowing or drowning of swamp or other lands or meadows, or let out the water so inclosed, or obstruct, hinder or stop the natural and usual course of any stream of water running from any pond used and improved for the supplying any mill or mills with water, either by stopping or shutting down the sluice of such dam, or by wilfully erecting, setting up or making any dam or other incumbrance across any stream or run of water, having no right or privilege so to do, belonging to any other person or persons, and where he or they have a lawful right between his or their pond and mill, or shall cut down, burn, damnify, carry away or destroy any mill or frame of a mill, flue, or any of the timber, boards or implements used in and about the same, or shall pull down, cut, destroy or any ways damnify any edifice, building or house not inhabited, frame or timber of any such building, cellar or well, being the property, or in the possession of any other person or persons, on pain that every person or persons, offending against this act or any part thereof, or that shall be aiding or assisting therein, shall, for every such offence or trespass, forfeit and pay to the party or parties so injured or trespassed upon treble the value of all such damages as such party or parties shall make appear to the justice or court and jury before whom the trial shall be, that he or they have sustained by any breach of this act, to be sued for and recovered in any court proper to try the same, after the same manner of conviction, and by the same rules and methods as is directed and provided in and by an act, intitled an act in addition to and for rendering more effectual an act, made in the tenth year of the reign of king William the third, intitled an act for preventing of trespasses, made in

No person to damnify any mill dam, mill pond, frames, cellars, &c.

Penalty.

Manner of conviction.

the twelfth year of the reign of his late majesty king George; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLXV.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT TO PREVENT INCESTUOUS AND CLANDESTINE MARRIAGES.

WHEREAS in and by an act made and passed in the seventh year of king William the third, intitled an act to prevent incestuous and clandestine marriages, it is among other things enacted, "that no justice of the peace or minister shall presume to join any persons in marriage without certificate produced under the hand of the clerk of the several towns where the parties respectively dwell, that the names and intention of the parties have been entered with him fifteen days beforehand, and that due publication of such their intention has been made in manner as by law is directed, &c." but sometimes it so happens that persons who purpose marriage live or reside in towns or places where there are no town clerks,

Where there is no town clerk, the clerk of the next town to enter marriages.

Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that in every such town or place where there is or shall be no town clerk, when any of the inhabitants shall desire marriage, they shall produce a certificate from the clerk of the town next adjoining, that the names and intentions of the said persons have been entered with him fifteen days beforehand, and that due publication of such their intention or purpose of marriage hath been made in the town where said town clerk dwells, that then and in such case it shall and may be lawful for any justice of the peace, or ordained minister, within their respective limits, to join any such persons in marriage; and such town clerk is hereby directed to set up such notifications and give such certificates, and shall be and hereby is in all respects subjected to the same pains and penalties upon his neglect that any other town clerk is by law subjected to for neglecting his duty in observing the laws relating to marriage; any law, usage or custom to the contrary notwithstanding.

Penalty.

CHAPTER CLXVI.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT TO ENABLE EXECUTORS AND ADMINISTRATORS TO PROSECUTE AND DEFEND ANY SUITS THAT ARE DEPENDING, OR HEREAFTER SHALL DEPEND UPON APPEAL, WHEREIN THE TESTATOR OR INTESTATE WAS OR SHALL BE APPELLANT OR APPELLEE.

FORASMUCH as in and by an act made and passed in the thirteenth year of his late majesty king George the first, intitled an act to enable executors and administrators to prosecute or defend any suits that are depending, or hereafter shall depend upon appeal, wherein the testator or intestate was or shall be appellant or appellee, no provision is made but only for the relief of executors or administrators in such suits as are depending upon appeal, which hath been found insufficient, for that oftentimes, upon the continuance of actions as well in the inferiour court of common pleas as in the superiour court of judicature, the plaintiff, complainant or informer, or the defendant, is taken away by death, pending such action or suit, before a final judgment can be obtained, by reason whereof sundry inconveniences have happened,

SECT. 1. Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when any action or suit is or shall be depending either in the inferiour court of common pleas or in the superiour court of judicature in any of the counties in this province, and it so happens that either party be taken away by death before a final judgment, the executor or executors, administrator or administrators of such deceased party who was plaintiff, complainant, informer or defendant shall have full power to prosecute or defend any such suit or action, as shall be depending at the death of the testator or intestate, from court to court until definitive judgment or sentence, and the defendants or appellees are hereby obliged to answer to such actions accordingly; and the justices as well of the inferiour court of common pleas as of the superiour court of judicature, before whom such cases are triable and depending, are hereby empowered and directed to observe the same method of proceeding in hearing, trying and determining such cases, and of entering up judgment and awarding execution thereupon, as in and by the aforementioned act is directed in cases depending upon appeal.

Executors and administrators empowered to prosecute or defend in actions depending, &c.

Attachments not to be voided by the death of the person.

SECT. 2. And be it further enacted by the authority aforesaid, that when any goods or estate shall be attached, or bail given, upon any writ or process that shall be depending as aforesaid, the same shall not be released or discharged by means of the death of either party, but be held good to respond the judgment to be given on such writ or process in the same manner as by law they would have been if such deceased party had been living; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLXVII.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT IN FURTHER ADDITION TO AN ACT, INTITLED AN ACT FOR REGULATING FENCES, CATTLE, &c.

WHEREAS in and by the additional act for regulating fences, cattle, &c. made and passed in the fourth year of the reign of his late majesty king George the first, provision is made for the proportioning of each proprietor's part of fence in general fields, but no provision is made for defraying the charge of dividing and setting off the same, nor for making or maintaining such parts of such fence, as may be unfit and injurious to be set off to any particular proprietor or proprietors,

Charge of setting off and making fence in common fields to be proportioned to the proprietors.

SECT. 1. Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that for the future the charge arising by dividing and setting off the several parts of fence in the common fields to and among the proprietors of lands inclosed and fenced in one general field, and the charge of making and maintaining of such fence as cannot justly be set off to any particular proprietor or proprietors as his or their part, shall be borne by the several proprietors thereof in proportion to their respective interests in said field.

Proprietors to choose haywards to be under oath.

SECT. 2. And be it further enacted by the authority aforesaid, that it shall be in the power of the said proprietors, or a major part of them, (the vote to be collected according to the interested present) at a meeting of such proprietors legally warned for that purpose, to choose haywards or field drivers, who are to be under oath, and to have the same powers as if they were chosen by a town, and also to choose assessors to assess the several proprietors for the ends aforesaid, in proportion to each one's interest; and in

Assessors to be chosen.

case of refusal of any proprietor to pay the sum assessed upon him, that then, upon application made, a warrant of distress shall be granted by any justice of the peace in the county where such land lies, directed to the constable of the town where such proprietor lives, requiring him to levy and collect of the said proprietor or proprietors his or their proportion of the sum assessed upon his goods or chattels, and for want thereof on his person.

Warrant of distress to be issued.

Provided nevertheless, if any proprietor or proprietors so assessed shall think himself aggrieved, he shall apply to the assessors, and if they shall refuse to relieve him, he shall or may have liberty to make application to the justices of the next court of general sessions of the peace for the county where the land lies, and the difference shall be heard and determined by the said court, whose judgment or sentence thereon shall be final; any law, usage or custom to the contrary notwithstanding.

Persons aggrieved to be relieved at the general sessions of the peace.

Provided always, that nothing contained in this act shall prevent or hinder the proprietors of any such common fields already fenced from making and maintaining their fences according to the rules and orders formerly agreed on by them at a meeting legally warned.

Proviso.

CHAPTER CLXVIII.

AN ACT IN ADDITION TO AND FOR RENDERING MORE EFFECTUAL AN ACT, INTITLED AN ACT TO PREVENT CAUSELESS ARRESTS, &c.

Whereas in and by an act made and passed in the thirteenth year of the reign of the late queen Anne, intitled an act to prevent causeless arrests, &c. it is enacted, "that every person, principal or attorney, executor or administrator, taking out a writ or attachment against another, before he receive it out of the clerk's office, shall indorse his surname on the back thereof towards the bottom, and shall stand chargeable and be liable to answer and pay to the adverse party his costs arising by the arrest and charge of imprisonment (if any be) to be taxed in common form by the judges of the court where the writ is returnable, in case of non-prosecution, discontinuance, or that the plaintiff be non-suit or judgment pass against him, to be levied on the principal, the executor, administrator or attorney that en-

dorsed or took out such writ, if the principal be without the province, or be unable to pay the same,

And whereas it hath so happened, when any company or number of persons are joined together in one suit, there is but one only, or not a majority of the plaintiffs that hath endorsed the writ, and thereupon such writ hath abated, because all the plaintiffs therein named have not endorsed the same, nor their attorney in their names and behalf, which by experience hath been found to be very prejudicial, especially with respect to the commissioners and trustees of the publick loan money, who seldom live together in the same town, but oftentimes very remote, so that it is exceeding difficult to get a writ endorsed by all the plaintiffs, especially when it so happens they are straitened in time, by means whereof there hath been a failure of justice, as well as loss and damage not only to the publick, but to particular persons, occasioned by the abatement of their writs, when the design of the law was only to secure the costs in case of non-prosecution, discontinuance, &c. as aforesaid, for redress whereof,

One person endorsing a writ, &c. sufficient, in case.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, when any writ or attachment shall be taken out at the suit of more than one person, the endorsement of one of the plaintiffs or his attorney shall be sufficient in the law, as well to oblige the defendant to answer, as the endorser to pay the cost and charges arising on such suit, in case judgment be for the defendant or defendants; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLXIX.

AN ACT FOR PREVENTING OF INJURIES AND UNNECESSARY DELAYS TO THE PARTIES WHO SHALL HEREAFTER BE CONCERNED IN SUITS AT LAW, AND FOR THE BETTER AND MORE SPEEDY EXECUTION OF JUSTICE.

WHEREAS heretofore objections have been made by parties, against whom judgment has been given in the superiour and inferiour courts respectively, to several of the articles charged in their bills of cost, for the attendance and travel of witnesses and otherwise, which bills have been frequently allowed long after the court's rising, and when the adverse

parties have not been present to make their just and reasonable objections to such articles, for prevention whereof for the future,

Bills of costs to be taxed immediately after judgment given.

Sect. 1. Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as any persons shall obtain judgment in their favour at the inferiour courts of common pleas or superiour courts of judicature, they or their attorneys respectively shall immediately after the recovery of such judgment draw up their bills of cost, and when they are examined by the clerks of the said courts respectively, present them to be taxed by one or more of the justices of the said courts, and the adverse parties or their attorneys attending the courts to be notified when the bill is to be taxed, that so they may make their objections, if any they have, to any of the articles charged in such bills, before the same be allowed; and no bill of cost shall be allowed after the court is adjourned without day, unless sufficient reason be given for such delay to the satisfaction of one or more of the justices of the court who shall be desired to tax such bill of cost.

Adverse party to be notified of it.

Exception.

And whereas it often happens that a great number of the judgments entered up at the inferiour courts within this province are appealed from by the defendants, who fail to prosecute their appeals to effect at the superiour court appealed to, and thereupon the plaintiffs or their attorneys enter their complaints against the appellants or defendants at the said superiour courts, but commonly neglect to draw up and file their complaints, in order to have the judgments of the inferiour court appealed from affirmed, until the last day of the sitting of the said superiour courts, by which method the complainants or their attorneys have the profit of many day's attendance, for which they are allowed in their bills of cost, and thereby throwing an unreasonable charge upon the defendants,

Court to allow of the attendance charged in the bill.

Sect. 2. Be it therefore enacted by the authority aforesaid, that in taxing bills of cost after judgment given upon a complaint at the superiour court, the complainant shall be allowed but so many days' attendance as the said court shall judge reasonable.

No person to receive charges of the suits till the bill is taxed.

And to the intent that no injustice may be done by an overcharge to the party against whom judgment shall be given, no person obtaining judgment shall receive any thing for charges of his suit till such time as the bill of cost be first taxed by one of the justices of the court who was present when the judgment was given; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLXX.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT FOR PROVIDING OF POUNDS, AND TO PREVENT RESCOUS AND POUND BREACH.

WHEREAS in and by an act made and passed in the tenth year of the reign of king William the third, intitled an act for providing of pounds, and to prevent rescous and pound breach, it is among other things enacted, "that there shall be a sufficient pound or pounds made and maintained from time to time, in every town and precinct within this province, in such part or places thereof as the selectmen shall direct and appoint," &c. but no penalty is therein set upon any town or precinct who shall neglect or refuse to make and maintain such pounds, for redress whereof,

Penalty for not having pounds.

Be it enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that every town and precinct within this province that shall neglect or refuse by the space of three months from and after the publication of this act, to make and maintain a sufficient pound or pounds in such town or precinct, according to the direction in the afore recited act, shall forfeit and pay the sum of ten pounds, one half thereof to such person or persons as shall inform and sue for the same, and the other half to the poor of the town so neglecting or refusing; to be recovered by bill, plaint or information in any of his majesty's courts of record in the county where the offence shall be committed.

CHAPTER CLXXI.

AN ACT IN ADDITION TO AND FOR RENDERING MORE EFFECTUAL AN ACT, INTITLED AN ACT FOR THE UPHOLDING AND REGULATING OF MILLS, MADE AND PASSED AT A SESSION OF THE GREAT AND GENERAL COURT OR ASSEMBLY, BEGUN AND HELD AT BOSTON UPON WEDNESDAY THE TWENTY-FIFTH DAY OF MAY, IN THE EIGHTH YEAR OF THE REIGN OF THE LATE QUEEN ANNE, ANNOQUE DOMINI, 1709.

WHEREAS great complaint is made by the inhabitants of the towns of Boston and Charlestown, that they are misused by the millers in not grinding their corn seasonably, and oft-times detaining it for a long time unground, to their great damage, and also that they are very much defrauded by the millers in taking an unreasonable toll,

SECT. 1. Be it therefore enacted by the lieutenant governor, council and representatives, in general court assembled, and by the authority of the same, that every miller within the towns of Boston and Charlestown, who shall not be provided with suitable scales and weights, sealed as the law directs, for weighing corn and meal in his mill, within the space of two months after the publication hereof, shall forfeit and pay the sum of ten pounds, the one half to his majesty for and towards the support of this government, and the other half to him or them that shall inform and sue for the same in any court of record in the counties of Suffolk or Middlesex.

Millers to be provided with scales and weights.

Penalty.

SECT. 2. And be it further enacted, that every miller in the towns of Boston and Charlestown, who shall not be provided with suitable scales and weights, sealed as the law directs for the end aforesaid, and shall continue in the neglect thereof after the expiration of the said two months, shall forfeit and pay the sum of five pounds for every month he shall continue in such neglect, to be recovered and disposed of as is herein before mentioned. And if any miller in the said towns of Boston or Charlestown, after the expiration of the said two months, do or shall presume to take a greater quantity of toll than a sixteenth part for any sort of grain by him ground, and be thereof convicted, he shall forfeit and pay for each offence the sum of five pounds, to be recovered and disposed of in manner as aforesaid. And if any miller in the said towns of Boston or Charlestown shall refuse to weigh corn, grain or meal brought to or carried from his mill, when desired, he shall for every such refusal forfeit

Penalty for continuing unprovided.

Penalty for taking too much toll.

And for refusing to weigh corn and meal.

and pay the sum of five shillings, to be recovered before any justice of the peace within the county of Suffolk or Middlesex by him or them that shall inform and sue for the same.

Penalty for keeping grain unground.

SECT. 3. And be it further enacted, that when any of the inhabitants of the towns of Boston or Charlestown shall send any grain to be ground at the mills there for the use of their families, the miller or millers shall receive into the mills all such grain, and within the space of three days at least take care that the same be ground, on pain of forfeiting the sum of ten shillings for every such neglect, and the sum of five shillings more for every day such grain shall be unground, except in extraordinary cases the mill is prevented working, to be recovered before any of his majesty's justices of the peace in the counties of Suffolk or Middlesex.

CHAPTER CLXXII.

AN ACT FOR REPEALING AN ACT, INTITLED AN ACT FOR THE PUNISHING AND PREVENTING OF DUELLING, AND FOR MAKING OTHER PROVISION INSTEAD THEREOF.

WHEREAS to the great dishonour of Almighty God, in defiance of the laws of nature and nations, contrary to the peace of our sovereign lord the king, and the precious life of man, there have been of late within this province several duels, rencounters and quarrels,

For preventing and suppressing such mischiefs for the future,

Punishment for duels and rencounters.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that whoever from and after the publication of this act shall be so hardy and wicked as to fight a duel, or for private malice, displeasure, fury or revenge, voluntarily engage in a rencounter with rapier or small sword, back sword, pistol, or any other dangerous weapon, to the hazard of life, maihem, or wounding of the parties, or the affray of his majesty's good subjects, although death doth not thereby ensue, or shall by word, message, or any other way, challenge another to fight a duel, or shall accept a challenge, although no duel be fought, or shall any ways abet, prompt, encourage or seduce any person to fight a duel, or to challenge another to fight, and be by due course of law before the court of assize and general gaol deli-

very in any of the respective counties within this province convicted thereof, shall for every such offence be carried publickly in a cart to the gallows, with a rope about his neck, and sit on the gallows for the space of one hour with a rope about his neck as aforesaid, and then committed to the common gaol of the county, and there remain without bail or mainprize for the space of twelve months, and at the expiration thereof shall find sureties for the peace and good behaviour for and during the space of twelve months more.

Disposition of the body of any person that is killed in a duel.

SECT. 2. And be it further enacted by the authority aforesaid, that when and so often as it shall appear by the coroner's inquest, that any person hath been killed in fighting a duel, the corpse or body of such person so slain shall not have a christian burial; but the coroner of the county where the fact shall be committed, shall be, and hereby is directed and empowered to take effectual care that the corpse of all persons so killed be immediately secured, and buried without a coffin, with a stake drove through the body, at or near the usual place of execution, provided it be within the space of ten miles, if otherwise, then in the most publick place in the town where the fact was committed, the charge thereof to be defrayed out of the estate of the deceased, if any to be found, by warrant of distress to be awarded by his majesty's justices of the superiour court of judicature, court of assize and general gaol delivery, upon the coroner's presenting a bill of charge therefor, and if no estate to be found, then the charge to be paid by the county; and in case any person shall slay or kill any other in duel or fight as aforesaid, and upon conviction thereof suffer the pains of death, as is by law provided for wilful murder, the body of such person shall not be allowed christian burial, but be buried without a coffin, with a stake driven through the body, at or near the place of execution, as aforesaid.

Disposition of the body of any person that kills another in a duel.

CHAPTER CLXXIII.

AN ACT DIRECTING HOW RATES AND TAXES TO BE GRANTED BY THE GENERAL ASSEMBLY, AS ALSO COUNTY, TOWN AND PRECINCT RATES, SHALL BE ASSESSED AND COLLECTED.

FORASMUCH as for the support of the government of this his majesty's province, and for the safety and defence thereof, and defraying the contingent charges arising within the same, it is necessary that a suitable supply of money should

be from time to time granted by the great and general court or assembly of the said province, to the intent therefore that there may be due provision made and established for assessing all such sum and sums of money as shall hereafter be granted by the general court, to be levied upon polls or estates within the province, or upon both polls and estates, for the support of the government thereof, or any other publick use or uses whereto the general assembly shall think fit to apply such grant or grants, as also that there may be like due provision to enforce the collecting and paying into the treasury such sum and sums of money, so to be granted as aforesaid, according to the true intent of the act or acts for granting the same,

Assessors to be annually chosen in the month of March.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that in the month of March annually, at the same time when town officers are chosen by the respective towns within this province according to the direction of an act, intitled an act for regulating of townships, choice of town officers, and setting forth their power, there may be elected and chosen by the freeholders and other inhabitants of every town duly qualified to vote in town affairs, then present, or the major part of them, three, five, seven or nine meet persons to be assessors of all such rates and taxes as the great and general court or assembly shall by any act or acts, to be by the same duly made and passed, order and appoint such town to pay towards the publick charges of the province, within the space of one year from the choice of such assessors, every of which so chosen shall, whithin the space of seven days next after, be sworn before a justice of the peace, or town clerk in any town where no justice of the peace dwells, who are hereby respectively empowered thereto in manner following, that is to say:

To be sworn.

Form of asssessor's oath.

You A. B. being chosen an assessor of such rates or taxes as the great and general court or assembly of this province have or shall order and appoint the town of C. to pay into the treasury of the province during the space of one year next ensuing, do swear, that in assessing or apportioning such rates or taxes you will proceed equally and indifferently according to your best skill and judgment and the rules to be prescribed in the act or acts for granting the same. So help you GOD.

And the town clerk or two of the selectmen of every town shall forthwith make and give out unto the constable or constables of the same a list of the names of those that shall be chosen assessors at any town meeting as aforesaid, which constable or constables shall thereupon summon each of the said assessors to appear at a certain time and place, within the space of seven days from the time of their election, before

a justice of the peace, if any dwell in such town, or otherwise before the town clerk thereof, to take the oath abovementioned; and if any such assessor shall neglect to appear accordingly, or appearing shall refuse to take the said oath, he shall forfeit and pay to the use of the poor of such town the sum of forty shillings, and if in Boston, five pounds, to be recovered in manner and form as is by law provided for recovering of fines and forfeitures for the use of the poor.

Penalty on assessors chosen that shall refuse.

And the selectmen of every such town, where any one or more of the assessors so chosen shall refuse as aforesaid, shall forthwith after notice thereof summon a meeting of the freeholders and inhabitants of such town to choose one or more assessor or assessors in the room or rooms of such so refusing, which freeholders and inhabitants duly qualified to vote, being so assembled, shall accordingly choose so many assessors as shall be wanting to complete the number which the town at the time of their first choice voted and agreed should be elected for the same.

A new choice to be made.

Provided always, that it shall be in the power of the court of general sessions of the peace, upon reasonable excuse made unto them by any assessor or assessors, chosen for any town or towns in the county for which such court is holden and kept, that shall refuse to accept as aforesaid, to abate and remit unto such assessor or assessors, if they see cause, the forfeiture or penalty aforesaid.

Court of general sessions of the peace empowered to abate or remit the penalty.

Sect. 2. And be it further enacted by the authority aforesaid, that if any town shall not choose assessors as aforesaid, or if so many of them so chosen as aforesaid shall refuse to accept, as that there shall not be such a number of them as any town shall agree to be the assessors thereof, then and in either of the said cases the selectmen of such town shall be, and hereby are declared and appointed the assessors of the same, and every of them shall take the oath before recited in manner as aforesaid; and each assessor attending that service shall be allowed and paid out of the town treasury four shillings per diem for each whole day he is necessarily employed thereabout.

Selectmen or trustees of towns to be assessors in case.

Assessor's allowance.

Sect. 3. Be it further enacted by the authority aforesaid, that if at any time there shall be a default or neglect in any town or precinct to make choice of selectmen or assessors, the said default or neglect being certified and made appear unto the court of general sessions of the peace within the same county, such town or precinct shall forfeit and pay the sum of twenty pounds for and towards the support of the government of this province; and in such case, as also where neither the selectmen nor assessors chosen by any town shall accept thereof, the justices of the court of general sessions of the peace in the same county shall and are hereby empowered to nominate and appoint three or more sufficient freeholders within such county to be assessors of

Penalty on towns that shall neglect to choose selectmen or assessors.

Court of general sessions of the peace to appoint assessors, in case.

the publick rates or taxes in any such town as aforesaid, which assessors so to be appointed by the said court shall take the oath before recited, and shall then assess the estate and persons of such town or precinct of which they shall be appointed assessors their due proportion to any publick tax, according to the rules set down in the act for raising of the same, together with the aforesaid forfeiture of twenty pounds, where the town makes default, and such additional sum as shall answer their own reasonable charges for time and expense in the said service, not exceeding five shillings a man per diem, and having assessed the same shall transmit a certificate thereof to the treasurer, with the names of the constables or collectors to whom they shall commit the same to be collected.

Allowance to such.

To be paid out of the publick treasury.

And such assessors shall be paid their charges as aforesaid, (the same being adjusted and certified by two or more justices of the court by whom they were appointed assessors, under their hands) out of the publick treasury, by warrant from the governor, with the advice and consent of the council.

Penalty on assessors that shall neglect their duty.

Sect. 4. And be it further enacted by the authority aforesaid, that all assessors aforesaid shall duly attend and observe all such warrants as during the time of their office they shall receive from the treasurer and receiver general of this province, pursuant to an act or acts to be made and passed by the great and general court or assembly of the same, for the assessing and apportioning any province rate or tax upon the inhabitants or estate within the town, whereof they are assessors, on pain that the assessors of any town or precinct failing of their duty, by such warrant of the treasurer of them required, shall forfeit and pay the full sum and sums in such warrant mentioned to be by them assessed upon the inhabitants or estate of the town or precinct whereof they are assessors, if the said sum and sums be therein made certain, which shall be levied by distress and sale of the estates real or personal of such defective assessors by warrant from the treasurer directed to the sheriff of the county, or his under-sheriff or deputy, in which such town or precinct lies, and the treasurer is hereby authorized and required in such cases ex officio to issue out his warrant, requiring the sheriff or deputy to levy the said sum and sums accordingly, and for want of estate to take the bodies of such defective assessors and to imprison them until they pay the same, which warrant the sheriff, his under-sheriff or deputy are hereby empowered and required to execute accordingly; and the court of general sessions of the peace, in each respective county wherein such defective assessors dwell, be and hereby are directed and empowered forthwith to appoint other meet persons to be assessors of such rate or tax, according to the directions contained in the

General sessions of the peace to appoint other meet persons in the room of defective assessors.

treasurer's warrant issued unto the former assessors, and the assessors which shall then be so appointed shall take the oath and be liable to the same duty and penalties as the former assessors.

Persons overrated to be eased.

SECT. 5. And be it further enacted by the authority aforesaid, that if any person or persons shall at any time be aggrieved at the sum or sums to be set and apportioned upon him or them by the assessors of any town, or district, or precinct, and shall demonstrate that he or they are rated more than his or their proportion with others, according to the rule given to the said assessors, to the sum set upon such town, district or precinct, by any act or acts of the general assembly, the said assessors shall ease him or them so aggrieved; and if they shall refuse so to do, such person or persons aggrieved, complaining unto the next general sessions of the peace within that county, and making it appear that he or they are assessed more than his or their proportion as aforesaid, shall be heard and relieved by the justices in the said sessions, and shall be reimbursed out of the town or parish treasury, so much as the said justices or assessors respectively shall see cause to abate him or them, with the charges; and the court of general sessions of the peace are empowered upon the complaint of any party grieved to require the assessors to produce the lists of their assessment.

Town and county rates to be apportioned by the same rule as publick taxes granted the same year.

SECT. 6. And be it further enacted by the authority aforesaid, that all county, town, precinct, district and parish rates and assessments shall be apportioned by the selectmen or assessors of the several towns, precincts, districts or parishes within this province, upon the inhabitants and estates within the same, according to the rule that shall from time to time be prescribed and set in and by the then last act of the general assembly which shall have been made and passed for the apportioning and assessing of the publick taxes granted unto his majesty, when such county, town, precinct, district or parish rate or assessment shall be made or apportioned; and such selectmen or assessors shall be under the like obligation of the oath, administered to the selectmen or assessors who apportioned the said publick tax, to proportion such county, town, precinct, district and parish assessments by the same rules.

Collectors of publick taxes may be chosen at the same time with the assessors.

SECT. 7. And be it further enacted by the authority aforesaid, that the freeholders and inhabitants of any town, precinct, district or parish, duly qualified to vote in town affairs, may, if they see cause, at the time they choose assessors, likewise elect and choose a meet person or persons to be collector or collectors of the publick rates or taxes that shall be assessed upon such town, precinct, district or parish, and agree upon what sum shall be allowed and paid out of the respective treasuries unto such collector or collectors for his or their service therein; but if such collector

or collectors so to be chosen shall refuse to accept that service, or that none such be chosen, then the constable or constables of such town or parish shall collect and gather such publick rates and taxes, and every collector or constable shall have a warrant from the treasurer and receiver general, or selectmen or assessors empowering him to collect such rates or taxes as shall be committed to him to collect, and shall pay in the same according to the directions in such warrant; and in case of any constable or collector's decease before his perfecting the collection of any publick assessment committed to him, the assessors of such town, precinct, district or parish shall empower and appoint, at their publick charge, some other fit person or persons to perfect the same collection, and present his or their names unto the treasurer, selectmen or assessors, who are hereby authorized and required to enable and empower such person or persons to collect the same by granting a warrant to him or them.

Provision in case of constable's or collector's decease.

Sheriff to disperse the treasurer's warrants.

Sect. 8. And be it further enacted by the authority aforesaid, that the treasurer and receiver general shall send such warrants, as he shall be from time to time ordered to issue for the assessing or collecting any publick rate or tax, inclosed to the sheriff of each respective county, who is required immediately to disperse and transmit the same unto the assessors, constables or collectors of the several towns, precincts, districts or parishes within such county, according to the directions thereof, and for his service, charge and expense, shall have a reasonable allowance ordered him by the justices in the court of general sessions of the peace in the same county, to be paid out of the county treasury, upon his laying the account thereof before them.

To be paid out of the county treasury.

Constable or collector empowered to distrain in case, &c.

Sect. 9. And be it further enacted by the authority aforesaid, that if any person or persons shall refuse to pay the sum or sums whereat they shall be assessed as their proportion to any publick rate or tax in the list committed to any constable or collector under the hands of the assessors of such town, precinct, district or parish, or the major part of them, upon demand thereof made by such constable or collector, by virtue of the warrant to him given, it shall and may be lawful to and for such constable or collector, and he is hereby authorized and required in such case to distrain the person or persons so refusing, by his or their goods or chattels, and the distress or distresses so taken to keep by the space of four days, at the cost and charge of the owner thereof; and if the owner do not pay the sum and sums of money so assessed on him within the space of four days, then the said distress or distresses to be forthwith openly sold at an outcry by the said officer for the payment of the said money, notice of such sale being posted up in some publick place in the same town twenty-four hours before hand, and the over-

Distress to be sold by outcry.

plus coming by said sale, if any be, over and above the charges of taking and keeping the said distress or distresses, to be immediately restored to the owner. And if any person or persons assessed as aforesaid shall refuse or neglect to pay the sum or sums so assessed, by the space of twelve days after demand thereof, where no sufficient distress can or may be found whereby the same may be levied, in every such case two or more of the assessors in such town, precinct, district or parish, are hereby authorized, by warrant under their hands and seals, to commit such person or persons to the common gaol, there to be kept without bail or mainprize until payment shall be made.

Persons to be committed, not having whereof to distrain.

SECT. 10. And be it further enacted by the authority aforesaid, that when any person or persons shall remove from any town or place where he or they lived, or had his or their residence, at the time of making the lists of any publick tax or assessments, not having before paid the respective sum or sums set upon him or them by such lists, it shall and may be lawful to and for the constable or collector to whom any such tax or assessment shall be committed with warrant to collect, and he is hereby authorized and empowered to demand the sum or sums assessed upon such person or persons, in what town or place soever he or they may be found; and upon refusal or neglect to pay the same, to distrain the said person or persons, by his or their goods or chattels as aforesaid, and for want of such distress to commit the party to the common gaol, there to remain until payment be made.

Persons removing from the place where they were assessed may be taken in any other.

SECT. 11. And be it further enacted by the authority aforesaid, that when at any time the general assembly shall order any publick rate or tax by them granted to be paid into the treasury at two or more several times or days of payment, and any person or persons, being inhabitants or dwellers in any town, precinct or parish within this province, at the time of making such rate or tax, and being assessed thereunto, shall be about to remove him or themselves from thence before the time that shall be prefixed for payment of the same, it shall and may be lawful in such case to and for the constable or collector of the same town, precinct, district or parish, to demand and levy the whole sum and sums which such person or persons shall be assessed at in his list or lists to such constable or collector committed, notwithstanding the time for collecting the second part of such rate or tax may not then be come, and in default of payment to distrain for the same, or to take any other way or course for the obtaining thereof, according to the rules and directions herein before provided; and when and so often as it happens that the constables or collectors be anew chosen and sworn for any town, precinct, district or parish, before the former constables or collectors have perfected their col-

Provision in case of persons being about to remove before the time for payment of the second part of any tax.

Constables to whom any tax shall be

committed to perfect their collection although other constables be chosen.

lection of any tax or assessment to them committed to gather, such former constables and collectors are notwithstanding hereby fully empowered and required to perfect all such collections, and may exercise the same powers and authorities for the gathering and enforcing the payment thereof, as by this act they might have done before other constables or collectors were chosen and sworn.

Constable, though succeeded in his office, may demand assistance of the constables for the time being in making distress, &c.

And in making any of the distresses aforesaid, or committing any person or persons to gaol as aforesaid, in case the same should be made after such constable or collector shall be succeeded in his office, it shall be lawful for such constable or collector to demand the aid and assistance of any of the constables of the town for the time being, where the delinquent person or persons live; and such constable is hereby enjoined and required to be aiding and assisting accordingly.

Provision in case of lands being rated in any town in which the owner or tenant thereof does not dwell.

Sect. 12. And be it further enacted by the authority aforesaid, that where the owner or tenant of any lands liable to publick taxes shall not reside, or be an inhabitant of the town, precinct, district or parish in which such lands lie, and no stock, corn or hay can be found upon the said lands, whereof the constable or collector may make distress to satisfy such sum or sums as from time to time such lands shall be assessed at, either to the province, county, town, parish or ministerial charges, in such case any justice of the peace in the county where the occupant of any such lands dwells or resides, upon application to him made by the constable or collector to whom the list wherein such lands shall be assessed shall be committed, and upon sight of the same, or authentick copy thereof, may and hereby is empowered and required to grant a warrant unto the constable of the town or place, where such occupant dwells or resides, to distrain such occupant by his goods or chattels the full sum at which the said lands are set in such list or assessment, with the charges occasioned for making such distress, and to satisfy the same by sale thereof, returning the overplus, if any be, to the owner, and in case no goods or chattels can be found whereon to distrain, to commit the party to the common gaol of the county, there to remain without bail or mainprize, until he pay and satisfy the sum or sums so assessed, with the charges.

Penalty on defective constables or collectors.

Sect. 13. And be it further enacted by the authority aforesaid, that if any constable or collector, to whom any publick tax or assessment shall be committed to collect, shall be remiss and negligent of his duty, in not levying and paying unto the treasurer or his deputy such sum and sums of money as he shall from time to time have received, and as ought by him to have been paid within the respective times set and limited by the treasurer's warrant, according to the directions therein, pursuant to law, the treasurer is

hereby empowered, after the expiration of the time so set, by warrant under his hand and seal, directed to the sheriff or his deputy, to cause such sum and sums of money to be levied by distress and sale of such defective constable's or collector's estate, real or personal, returning the overplus, if any be, and for want of such estate to take the bodies of such constables or collectors, and to imprison them, until they pay the same, which warrant the sheriff or his deputy is hereby empowered and required to execute accordingly.

The town or precinct, in which any defective constable or collector lives, to be answerable for his payment into the treasury of the sums committed to him to collect.

SECT. 14. And be it enacted, that if any constable or collector so failing as aforesaid have no estate to be found whereon to make distress, and his person cannot be taken within the space of two months from the time which was set for his paying the same into the treasury, in such case the town or precinct, whereof the constable or collector so fails of his duty, shall within three months from the expiration of the said two months make good to the treasury the sum or sums due and owing to the same from such defective constable or collector, which the assessors of such town, having notice from the treasurer of the failure of any constable or collector as aforesaid, shall forthwith thereupon, without any other or further warrant, assess upon the inhabitants and estates of such town in manner as the sum so committed to such defective constable or collector was assessed, and commit the same to some other constable or collector to collect, who is to be empowered thereunto by warrant from the treasurer.

Provided always, that such constable or collector failing of his duty as aforesaid, for whose default the town is answerable as before expressed, shall at all times afterwards be liable to the action or suit of the treasurer of such town for all such sum and sums as were assessed upon the same through his default, and for other damages accruing unto the said town thereby.

Executors or administrators of constables deceased to make up their accounts, &c.

And in case of the decease of any constable or collector in any town, precinct, district or parish, before his having adjusted the accounts of his assessment to him committed, the executors or administrators of such constable or collector shall, within two months after his decease, settle and make up accounts with the assessors of the said town, precinct, district or parish, of such part of the assessment as was received and collected by the deceased constable or collector in his life-time, with which such executors or administrators shall be chargeable in like manner as the deceased constable or collector should be if living, and such assessors shall thereupon procure and appoint some suitable person or persons a collector or collectors to perfect such collection, and they are accordingly hereby empowered and required to perform and execute all such powers as were granted to the deceased constables or collectors therein. And if the exe-

cutors or administrators of any constable or collector so deceasing, not having fully collected the assessment committed, shall fail of making up and settling the account of what was received by the deceased as aforesaid, before the expiration of the time aforesaid, such executors or administrators shall be chargeable with the whole sum committed to be collected by the constable or collector, unto whom they are executors or administrators, as the deceased constable or collector should be if living, in case there be sufficient assets.

Penalty on defective sheriffs or marshals.

SECT. 15. And be it further enacted by the authority aforesaid, that where any sheriff or his deputy shall make default in accounting for or returning into the treasury the sum and sums mentioned in any warrant or warrants of distress by him to be received from the treasurer, the treasurer in such case is hereby authorized and empowered to make out his warrant directed unto the coroner or coroners of such county where any sheriff or under sheriff is defective, requiring them respectively to distrain the same upon the estate, real or personal, of such defective sheriff or his deputy, as is before directed herein, referring to the sheriff or under sheriff making distress upon the estate of defective constables or collectors, which warrant the coroner or coroners of any county shall be directed, and are hereby empowered and required to execute accordingly.

How real estates levied by the treasurer's warrant shall be disposed of.

SECT. 16. And be it further enacted by the authority aforesaid, that where any sheriff or his deputy shall, by warrant from the treasurer, pursuant to this act, distrain and levy the lands or tenements of any constable or collector, or where any coroner shall by warrant as aforesaid distrain and levy the lands or tenements of any sheriff or under sheriff, for their or any of their defaults in not collecting or not paying into the treasury any sum or sums of money which ought to be by them collected, levied and paid in as aforesaid, in every such case the sheriff or either of his deputies, or the coroner executing such warrant or warrants of distress, shall cause due appraisement to be made of any houses or lands so levied by the oaths of two or three sufficient freeholders in the same county, which oath any justice of the peace is hereby empowered to administer, and after appraisement thereof so made, is hereby fully authorized and empowered to make sale of such houses or lands, and to make, seal, acknowledge and execute good and sufficient deeds and conveyances for the same, and out of the produce thereof to pay and satisfy the sum and sums for which such estate shall be levied, with all charges arising thereon, and to return the overplus upon such sale, if any be, unto the owner. And all deeds and conveyances of any such estate in houses or lands duly executed as aforesaid shall be good and effectual in the law unto the purchaser, his heirs and assigns for ever, to all intents and purposes.

Things exempted from distress.

SECT. 17. Provided always, and be it further enacted by the authority aforesaid, that in no case whatsoever any distress shall be made or taken from any person or persons of his or their beasts belonging to the plough, nor of tools or implements necessary for his or their trade and occupation, no of his or their arms or utensils of household, necessary for upholding of life, nor of bedding or apparel necessary for him or themselves or family; any law, usage or custom to the contrary notwithstanding.

Town of Provincetown to choose in January, annually.

SECT. 18. Provided always, and it is hereby ordained and declared by the authority aforesaid, that it shall be in the power of and lawful for the town of Provincetown annually to elect and choose in the month of January, at a meeting regularly called for that purpose, all town officers as the other towns in this province are empowered to do at their anniversary meeting in March; any thing before contained herein, or any other law, usage or custom to the contrary notwithstanding.

CHAPTER CLXXIV.

AN ACT TO PREVENT FRAUDS IN MUSTER ROLLS.

WHEREAS it is judged necessary by this court, that some forts and garrisons within this province in time of peace should be supported for the safety thereof, which cannot be without considerable cost and charge, and to the intent that no money may be drawn out of the publick treasury for the payment of any officer, soldier or mariner retained in his majesty's service and pay of this government, but such as bona fide are not only enlisted, but actually in person do perform their duty,

Penalty for false musters.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that every officer posted at any of the forts, garrisons or truck houses within this province, and all such officers as may hereafter be retained in his majesty's service, and the pay of this government, and have soldiers or mariners under their command and enlistment, after the publication of this act, that shall make any false or untrue muster of any man, or shall wittingly or willingly allow or sign any false or untrue muster roll, or any duplicate of such roll, upon proof thereof upon oath made by two witnessess before the superiour court of judi-

cature, court of assize and general gaol delivery, shall for such offence be disabled from having or holding any civil or military office or employment in this province, and shall likewise forfeit and pay to his majesty the sum of one hundred pounds, the one moiety or half part of which fine or forfeiture to be applied to and for the use and support of this his majesty's government, the other part to and for the use and service of the informer or informers.

Penalty for entering soldiers by a wrong name.

SECT. 2. And be it further enacted by the authority aforesaid, that if any officer shall enter any person on the muster roll by a wrong name knowingly, upon conviction thereof, such officer shall suffer such pains and penalties as are directed to be inflicted by this act on those that shall make and present any false muster roll.

And to discourage and as far as may be prevent all officers from making and presenting false muster rolls,

Summons to be given for offender's appearance.

SECT. 3. Be it further enacted by the authority aforesaid, that upon any complaint or information filed against any officer for breach of this act in the clerk's office of the superiour court of judicature, setting forth the facts committed by the said officer, fourteen days before the sitting of the said court, upon leave obtained under the hand of the captain general or commander in chief, the clerk shall issue forth a summons to the officer informed against, commanding him to appear at the superiour court of judicature, &c. to answer to such complaint, which summons, with a copy of the information, shall be served upon the officer complained of fourteen days before the sitting of the court.

Subpœnas to be issued for witnesses.

SECT. 4. And be it further enacted by the authority aforesaid, that if any witnesses to prove the facts complained of be retained in his majesty's service and pay of this government at any of the forts, or truck-houses, or vessels, upon application made to and leave therefor had from the captain general or commander in chief as aforesaid, the clerk shall make out subpœnas for such witnesses to attend the said court as evidences in the said cases.

Penalty for an officer's preventing witnesses to appear.

SECT. 5. And be it further enacted by the authority aforesaid, that if any officer shall presume to detain any soldier or sailor under his command, or any ways prevent their attending the said court, when summoned and notified as before directed, such officer upon conviction thereof shall forfeit and pay the sum of one hundred pounds, to be disposed of in such manner as in this act is already provided, to be recovered by bill, plaint or information in his majesty's superiour court of judicature, court of assize and general gaol delivery; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLXXV.

AN ACT IN ADDITION TO THE ACT, INTITLED AN ACT FOR THE SETTLEMENT AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

WHEREAS in and by an act made and passed in the fourth year of the reign of king William and queen Mary, intitled an act for the settlement and distribution of the estates of intestates, it is among other things provided, that the appraisement and division of the houses and lands of any person dying intestate shall be made by freeholders, to be appointed and sworn by the judge for the probate of wills and granting administrations, which practice, by reason of the great distance of the said judge from some such estates, hath been found very burdensome and expensive, for remedy whereof,

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that henceforward, when and so often as it shall happen that the estate of any person dying intestate shall be more than ten miles distant from the dwelling place of the judge of probate for the county where such estate shall lie, it shall be in the power of any one of his majesty's justices of the peace for the several counties to swear the persons appointed for the purpose aforesaid; and in case such estate be more than ten miles distant from a justice of the peace, such persons as aforesaid may be sworn by the clerk of the town where the estate lies, a certificate of such oath taken by the justice and clerk respectively to be given into the probate office, when the persons appointed and sworn as aforesaid make return of their doings; any law, usage or custom to the contrary notwithstanding.

Persons to appraise and divide intestate estates to be sworn by a justice of the peace, in case.

CHAPTER CLXXVI.

AN ACT FOR ERECTING, GRANTING AND MAKING A COUNTY IN THE INLAND PARTS OF THIS PROVINCE, TO BE CALLED THE COUNTY OF WORCESTER, AND FOR ESTABLISHING COURTS OF JUSTICE WITHIN THE SAME.

New county erected by the name of Worcester.

Names of the towns therein.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the towns and places hereafter named and expressed, that is to say, Worcester, Lancaster, Westborough, Shrewsbury, Southborough, Leicester, Rutland and Lunenburgh, all in the county of Middlesex, Mendon, Woodstock, Oxford, Sutton, including Hassanamisco, Uxbridge, and the land lately granted to several petitioners of Medfield, all in the county of Suffolk, Brookfield in the county of Hampshire, and the south town laid out to the Narragansett soldiers, and all other lands lying within the said townships, with the inhabitants thereon, shall, from and after the tenth day of July, which will be in the year of our Lord one thousand seven hundred and thirty-one, be and remain one entire and distinct county by the name of Worcester, of which Worcester to be the county or shire town, and the said county to have, use and enjoy all such powers, privileges and immunities as by law other counties within this province have and do enjoy.

Courts of justice established in said county.

SECT. 2. And be it further enacted by the authority aforesaid, that there shall be held and kept within the said county of Worcester, yearly and in every year, at the times and places in this act hereafter expressed, a court of general sessions of the peace and an inferiour court of common pleas, to sit at Worcester on the second Tuesdays of May and August, and the first Tuesdays of November and February yearly and in every year, until this court shall otherwise order; also, that there shall be held and kept at Worcester, within the said county of Worcester, yearly and in every year until this court shall otherwise order, a superiour court of judicature, court of assize and general gaol delivery, to sit on the Wednesday immediately preceding the time by law appointed for the holding of the said superiour court of judicature, court of assize and general gaol delivery at Springfield, within and for the county of Hampshire; and the justices of the said court of general sessions of the peace, inferiour court of common pleas, superiour court of judicature, court of assize and general gaol delivery respectively, who

are or shall be thereunto lawfully commissioned and appointed, shall have, hold, use, exercise and enjoy all and singular the powers which are by law already given and granted unto them, within any other counties of the province, where a court of general sessions of the peace, inferiour court of common pleas, superiour court of judicature, court of assize and general goal delivery, are already established.

Proviso referring to matters now depending in the courts of the other counties.

Provided, that all writs, suits, plaints, process, appeals, reviews, recognizances, or any other matters or things which now are, or at any time before the said tenth day of July shall be depending in the law within any part of the said county of Worcester, and also all matters and things which now are, or at any time before the said tenth of July shall be depending before the judges of probate within any part of the said county of Worcester, shall be heard, tried, proceeded upon and determined in the counties of Suffolk, Middlesex and Hampshire respectively, where the same are or shall be returnable or depending, and have or shall have day or days.

Proviso referring to the registry of deeds in the other counties.

Provided also, that nothing in this act contained shall be construed to disannul, defeat, or make void any deeds or conveyances of lands, lying in the said county of Worcester, where the same are, or shall be before the said tenth of July recorded in the register's office of the respective counties where such lands do now lie, but that all such deeds or conveyances so recorded shall be held good and valid as they would have been had not this act been made.

Register of deeds to be chosen.

SECT. 3. And be it further enacted by the authority aforesaid, that the justices of the court of general sessions of the peace at their first meeting in the said county of Worcester shall have full power and authority to appoint some meet person within the said county of Worcester to be register of deeds and conveyances within the same, who shall be sworn to the faithful discharge of his trust in the said office, and shall continue to hold and exercise the same according to the directions of the law, until some person be elected by the freeholders of the said county of Worcester, who are hereby empowered to choose such person on the first Thursday of September next ensuing, by the methods in the law already prescribed, to take upon him that trust; and until such register shall be so appointed by the said justices and sworn, all deeds and conveyances of lands lying within any part of the county of Worcester, which shall be recorded in the register's office of the respective counties where such lands do now lie, shall be held and deemed good and valid to all intents and purposes as to the recording thereof.

Manner of appointing a register

SECT. 4. And be it further enacted by the authority aforesaid, that the methods, directions and proceedings by law provided as well for the electing and choosing a register of

of deeds and county treasurer.

deeds and conveyances, as a county treasurer, which officers shall be appointed in the same manner as is by law already provided, on the first Thursday of September next, and also for the bringing forward and trying any actions, causes, pleas or suits both civil and criminal in the several counties of this province and courts of judicature within the same, and choosing of jurors to serve at the courts of justice, shall extend and be attended, observed and put in practice within the said county of Worcester, and by the courts of justice within the same; any law, usage or custom to the contrary notwithstanding.

Proviso about taxes.

Provided always, that the inhabitants of the several towns and places herein before enumerated and set off a distinct county shall pay their proportion to any county rates or taxes already made and granted in the same manner as they would have done, had not this act been made.

CHAPTER CLXXVII.

AN ACT EMPOWERING COURTS TO ADJOURN AND REMOVE FROM THE TOWNS APPOINTED BY LAW FOR HOLDING COURTS TO OTHER TOWNS, IN CASE OF SICKNESS BY THE SMALL POX.

WHEREAS the several acts of this province for establishing and holding the superiour court of judicature, court of assize and general gaol delivery, courts of general sessions of the peace, and inferiour courts of common pleas in the several counties of this province, and for ascertaining the time and place for holding the same, do not empower the justices of the said courts to adjourn to any other town from those where the said courts are held according to law, though at the same time the small pox (being a mortal infectious distemper) may prevail there, and so endanger the lives and health of many of his majesty's good subjects obliged to attend said courts, or in a great measure prevent persons concerned attending, whereby justice may be greatly delayed, and the subject oppressed,

Courts to be removed, in case of the small pox.

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when any of the before mentioned towns shall be visited with the aforesaid mortal infectious distemper, at the time appointed for holding said

courts, that then it shall be in the power of the justices of said courts to adjourn and remove to one of the next adjacent towns of safety; any law, usage or custom to the contrary notwithstanding.

CHAPTER CLXXVIII.

AN ACT MAKING MORE EFFECTUAL PROVISION FOR THE CALLING OF PRECINCT OR PARISH MEETINGS.

WHEREAS his majesty's justices of the peace in their several counties are, by the acts or laws of this province already made, empowered, upon application made to them, to issue out their warrants for the calling of the first meeting of any parish or district, regularly set off, but no provision is made for the calling any after meeting in case of the death or refusal of any of the major part of such a committee, as are empowered to call other or after parish meetings,

Justices empowered to call precinct meetings after the first, in case.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when it shall so happen by the refusal of any committee, empowered to call meetings in any parish or district, or their being disabled by the death or removal of the major part of such committee, that then it shall and may be lawful for any justice of the peace in the county where such precinct, district or parish lies, and such justice is hereby empowered, upon application to him made by five or more freeholders of such precinct or parish by writing under their hands for calling of a meeting, to issue out a warrant for the assembling such district or parish, directed to one of the freeholders, requiring him to notify the freeholders and others (qualified by law to vote) of the time and place of the meeting, and the freeholders and other inhabitants so convened shall have full power to choose all necessary officers, to act and transact all matters and things relating to their parish as they shall judge convenient, provided that such matters and things are contained in the warrant or notification of the said meeting.

And whereas no provision is made in the law for swearing of parish officers in towns where no justice of the peace dwells, and the travelling to other towns is attended with charge and difficulty, therefore,

SECT. 2. Be it enacted by the authority aforesaid, that the assessors and other officers in any parish or district,

Clerk to administer an oath where no justice dwells.

being in a town where no justice of the peace dwells, shall and may be sworn to the faithful discharge of their office before the clerk of such parish or precinct, who is accordingly empowered to administer the same, the said clerk being first sworn before one of his majesty's justices in the said county.

CHAPTER CLXXIX.

AN ACT IN EXPLANATION OF AND ADDITION TO AN ACT, INTITLED AN ACT TO PREVENT UNNECESSARY LAW-SUITS.

WHEREAS by an act made and passed in the fourth year of his present majesty's reign, intitled an act to prevent unnecessary law suits, it is provided, "that where any person is sued in a plea of debt due by book, he may plead what is due upon his book, by way of balance to the plaintiff's book," upon which many doubts have arisen and may arise, wherefore, for the explanation thereof,

Accounts open or balanced admitted as evidence.

SECT. 1. Be it enacted and declared by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the true intent and meaning thereof is, that if any person be sued in any action, either of debt or of the case, for any sum of money due upon contract between the parties for any goods sold or service done, whether the account be open, or a balance thereof be made and signed by the parties, except specialties and express contracts in writing, he may either plead specially, or upon the general issue give in evidence what is due upon his book by way of balance to the plaintiff's demand, and be admitted to all such method and course of proving his account as any plaintiff upon his suit might.

Defendant's book admitted as evidence against the plaintiff's demand.

And inasmuch as it hath sometimes happened, that when two persons have at the same time execution against each other, one of them absconds and leaves a power of attorney with some other person, to receive the money due on his execution, and by his absconding as aforesaid avoids paying the other execution,

For prevention whereof, and such like inconveniences for the future,

SECT. 2. Be it enacted by the authority aforesaid, that when and so often as it shall happen that the sheriff, his deputy, or any coroner, or his deputy, or constable shall at

the same time have several executions wherein the creditor in one execution is debtor in the other, that in such case such officer or officers are hereby empowered and directed to cause one execution to answer and satisfy the other, so far as the same will extend. One execution to answer another.

Provided always, that this act shall not be construed to extend to any judgments and executions, wherein the creditor in one execution is not in the same capacity and trust debtor in the other. Proviso.

CHAPTER CLXXX.

AN ACT IN ADDITION TO THE ACT, INTITLED AN ACT FOR REVIEW IN CIVIL CAUSES.

WHEREAS in and by an act of this province, intitled an act for review in civil causes, made and passed in the thirteenth year of the reign of his late majesty king William the third, it is enacted, "that it shall be in the liberty of the party aggrieved at the judgment given in any inferiour court of common pleas, or in the superiour court of judicature respectively, by new process to review the said cause, once in each court," and it is also thereby further enacted, "that execution shall not be stayed or suspended for or by reason of any process of review," which law by experience hath been found to be in general good and wholesome, but by reason of the last mentioned clause of the act it hath frequently happened in cases where the plaintiff in the original action hath obtained judgment against the defendant, upon the appeal at the superiour court of judicature, whereupon execution hath immediately issued, and the original defendant, either by means of the said plaintiff's living out of the province, or of his insolvency, or of his suing as executor or administrator, hath been defeated of duly serving his writ of review, or finally lost or been put to great difficulty to recover back the money levied by execution, although he prosecuted his writ of review at the next superiour court of judicature, and judgment there rendered for reversing the former judgment with costs, which is such an hardship upon the original defendant that he loses the good effects intended by the said law, for remedy whereof for the future,

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when the original plaintiff

Execution on judgments on the appeal to be staid in case.

in any personal action now depending, or hereafter to be commenced, upon the trial of the appeal at the superiour court, shall obtain judgment against the original defendant for any sum or sums of money or other things sued for, and costs, in all such cases such defendant entering into bonds at the time of making up the said judgment, with sufficient security to be approved of by the said court, with condition to prosecute a writ of review of the said action with effect at the next superiour court of judicature to be holden within and for the same county, and to answer and pay to the original plaintiff for the debt recovered after the rate of twelve pounds per cent. per annum, being double interest, from the time of making up said judgment, for his being delayed, and double additional costs, in case the judgment be affirmed, execution shall be stayed until judgment upon the review; and in case the original plaintiff shall not be an inhabitant or resident in this province at the time of prosecuting the writ of review, it shall be deemed a good and legal service for the plaintiff on the review to serve the attorney, factor, agent or trustee of the original plaintiff or such person as appeared for the original plaintiff on the appeal, with his writ of review, which shall be deemed as effectual to hold him to answer and defend in the said action as if he himself were served with said process. Provided, that the double interest aforementioned shall not extend to the letting of cattle or usages of the like nature in practice among farmers, or maritime contracts among merchants, as bottomry or course of exchange, as hath been heretofore accustomed.

Writs of review may be served on attorney &c. in case.

Proviso.

Writ of review in real actions may be served on ter-tenants in case.

SECT. 2. And be it further enacted by the authority aforesaid, that in all real actions where the defendant or defendants in the review happen to live out of the province, so that he, she or they cannot be duly served with a writ of review, the service of such writ upon the ter-tenant or person in possession of the premises shall be deemed a good service to hold the defendant or defendants to answer and defend in said suit, and the court of judicature where the said writ is returnable shall proceed to try the action, as if process had been served upon the original defendant or defendants personally.

CHAPTER CLXXXI.

AN ACT IN FURTHER ADDITION TO AN ACT, INTITLED AN ACT FOR MAKING EFFECTUAL PROVISION FOR THE CALLING OF PRECINCT OR PARISH MEETINGS.

WHEREAS by an act made in the fourth and fifth years of the reign of his present majesty, intitled an act for making effectual provision for the calling of precinct or parish meetings, it is enacted, "that when it shall so happen, by the refusal of any committee empowered to call meetings in any parish or district, or their being disabled by the death or removal of the major part of such committee, that then it shall be lawful for any justice of the peace in the county where such precinct, district or parish lies, and such justice is empowered to issue out a warrant for the assembling such district or parish, &c." but no provision is made by the said act for the calling of precinct or parish meetings after the first meeting, where there shall be a failure of choosing and appointing a committee to call meetings for the future, as it hath sometimes happened, by means whereof many inconveniences have arisen,

SECT. 1. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that where no such committee has been chosen in any parish or precinct, then and in such case, upon application of five or more of the freeholders and inhabitants of such precinct or parish to any one of his majesty's justices of the peace of the county where such precinct or parish lies, by writing under their hands, for calling of a meeting to choose precinct officers, and to transact such matters and things necessary for the ordering the affairs of such precinct or parish, such justice is hereby empowered and directed to issue out a warrant for the assembling such precinct, district or parish as aforesaid, directed to the clerk (if any be) or one of the freeholders asking the same, requiring him to notify the freeholders and other inhabitants qualified by law to vote in town affairs of the meeting, in like manner and according to the rules and directions prescribed in an act, intitled an act in further addition to the act for the more effectual providing for the support of ministers, made in the tenth year of the reign of king George the first.

A justice of the peace to call parish meetings after the first meeting, in case

And whereas many inconveniences have arisen from a justice of the peace only being empowered to swear a precinct or parish clerk,

The moderator of the meeting to swear the parish clerk, in case.

SECT. 2. Be it therefore enacted by the authority aforesaid, that in case there be no justice of the peace present at the choice of a parish or precinct clerk, that then it shall be in the power of the moderator of such precinct or parish meeting to swear such parish or precinct clerk to the faithful discharge of his office, who is hereby empowered to swear the rest of the precinct officers.

CHAPTER CLXXXII.

AN ACT IN FURTHER ADDITION TO THE SEVERAL ACTS OR LAWS FOR THE SETTLEMENT AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

WHEREAS it often happens that persons dying intestate are seized and possessed of lands and other real estate, lying and being in several counties within this province, and thereupon it hath been disputed whether the next of kin and heirs at law ought not to apply to the judges of probate in the respective counties where such lands and real estate lie for a settlement and distribution of the same, by means whereof not only great trouble, cost and charge hath arisen and been occasioned to the parties concerned, but the same hath been attended with many other inconveniences,

Power to settle lands in several counties by one judge of probate.

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when it shall so happen that any person shall die intestate, seized of lands or other real estate lying in several counties within this province, the judge of probate for any such county (preference to be always given to the judge of probate for the county where the deceased was an inhabitant at the time of his death) shall have full power and authority to make a settlement and distribution of the whole of the real estate of such intestate, in whatsoever county in this province lying and being, in the same manner and by the same rules as are already prescribed by law; and the like power and authority is hereby granted to the several judges of probate in this province, with respect to any intestate estate not already settled.

Proviso.

Provided always, that this act nor any thing therein contained shall be construed to extend to or any wise affect any intestate estate already settled.

CHAPTER CLXXXIII.

AN ACT IN FURTHER ADDITION TO AN ACT, INTITLED AN ACT FOR THE PUNISHING OF CRIMINAL OFFENDERS.

WHEREAS the penalties already provided in and by an act, made and passed in the fourth year of the reign of king William and queen Mary, intitled an act for the punishing of criminal offenders, have in a great measure proved ineffectual to restrain persons from drunkenness, profane swearing and cursing,

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that for the future whoever shall be convicted of profane swearing or cursing shall for the first offence forfeit and pay the sum of ten shillings, and for every such oath or curse after the first (uttered at the same time and in the hearing of the same person or persons) the sum of two shillings; and if any such offender shall at any other time afterward be convicted of profane swearing or cursing, he or she shall forfeit and pay for every such oath or curse the sum of ten shillings, and also be proceeded with in like manner as the aforesaid act directs in case of a second conviction of drunkenness; and if any person shall be convicted of drunkenness, such offender shall forfeit and pay the sum of ten shillings for every such offence.

Penalties for drunkenness and profane swearing and cursing.

The respective fines before mentioned to be recovered in the manner, at the time, and disposed of for the use in said act mentioned.

And in case any such offender as aforesaid shall be unable or refuse to pay such fine or fines on him or her imposed, the justice or justices before whom the conviction shall be, are hereby empowered to punish such offender agreeable to the direction of the law made in the fifth year of king William and queen Mary, intitled an additional act for the punishing criminal offences.

CHAPTER CLXXXIV.

AN ACT IN ADDITION TO THE SEVERAL ACTS RELATING TO AND FOR PREVENTING OF ENCROACHMENTS AND INCUMBERANCES UPON HIGHWAYS, PRIVATE WAYS, STREETS, &c.

WHEREAS the provision made by the law for removing of incumberances, buildings or fences upon or across, or that do or may obstruct or straiten the highways, private ways, town ways, streets or alleys, has been found in some cases insufficient to pay and satisfy the charge of removing the same, and whereas also it frequently happens, in ancient towns especially, that after lands have been long fenced in particular lots or proprieties, such fences are generally reputed the bounds between such particular lots, and the highways, private ways, streets, alleys or commons within such town, and no monuments remain of any other boundaries, whereby great advantage is given (to persons so disposed) to encroach on said highways and commons, and the prosecution of such offences is rendered extremely difficult, for remedy whereof,

Buildings, fences, &c. on highways, &c. to be removed.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that if any person or persons, at any time from and after the publication of this act, shall presume to set up or cause to be set up or erected any building, fence or other incumberance whatsoever, in, upon, or over any of the roads, highways, private ways, streets, lanes or alleys, in any town within this province, or continue any such incumberance, and be duly convicted thereof, the said incumberances, buildings or fences, shall be removed, as in and by law is directed; and in case the materials of such buildings, fences, or other incumberances, be insufficient to pay and satisfy the charges of removing the same, and costs of prosecution, the court or justice before whom such prosecution shall be made, shall and are hereby empowered to order the payment thereof out of other goods or estate of the person or persons so offending, and award execution accordingly.

Charges how to be defrayed.

Boundaries stated.

SECT. 2. And be it further enacted by the authority aforesaid, that where fences have been erected fronting against any of the common lands and highways, private ways, streets, lanes or alleys in any town or peculiar within this province, where the breadth of such highways, private ways, streets, lanes or alleys is not known, nor can be made certain by the records thereof, nor any other boundaries,

and such fences have been upheld and maintained for more than the space of thirty years, such fence or fences shall then, and from thenceforth, be accepted, reputed and taken as the lines or boundaries between the said commons, highways, private ways, streets, lanes or alleys, and the lands lying in particular propriety adjoining thereto, unless the owner or owners of such lands do make it appear by authentick records, or credible witnesses, that his or their bounds did extend further in the original grant thereof.

No fences to be removed nearer commons, highways, &c. without duly notifying the selectmen or other persons appointed.

Penalty.

Sect. 3. And be it further enacted by the authority aforesaid, that if any owner or proprietor of lands, inclosed and fenced as aforesaid, shall remove his or their fence or fences further towards any such commons, highways, streets, lanes or alleys, without duly notifying the selectmen of the town wherein such lands do lie, or such other person or persons respectively as are or shall be chosen and appointed by such town or the proprietors thereof to take the care and inspection of the boundaries between the land of particular persons and the lands in said town, appropriated for common, highways, &c. that so the lines or boundaries may be perambulated before the fences be so removed, every such person and persons so offending, or that shall be aiding or assisting therein, upon conviction thereof, shall forfeit and pay the sum of forty shillings, to be disposed of, one half to the poor of such town where the offence shall be committed, the other half to him or them that shall inform and sue for the same.

CHAPTER CLXXXV.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT FOR THE EASE OF PRISONERS FOR DEBT.

Note. The act which this is founded upon is not among the perpetual acts.

Whereas it is provided in and by an act made and passed in the fourth year of the reign of king George the second, intitled an act for the ease of prisoners for debt, "that any person imprisoned for debt, either upon mean process or execution, shall be allowed the liberty of the prison yard, the prisoner with two sufficient sureties giving bond to the sheriff for his keeping within the limits thereof, until lawfully discharged," and although it is further provided, "that in case of an escape the penalty of such bond shall be to and for the use of the creditor, and shall be transferred and assigned over to the creditor by the sheriff," yet forasmuch

as the creditor upon putting such bond in suit can recover judgment only for the original debt, with cost of suit and interest, by reason of which escapes are not sufficiently discouraged, and many creditors kept out of their just dues to their great hurt and damage, for remedy whereof,

Upon prisoner's escape the whole bond assigned to the creditor.

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that henceforward, when and so often as any prisoner, having given bond as aforesaid, shall make an escape, the whole penalty of such bond shall be to and for the use of the creditor, and shall be transferred and assigned over to the creditor by the sheriff, with full power to enable him to put the same in suit, and the creditor shall recover the whole sum therein expressed, and the court shall make up judgment accordingly.

CHAPTER CLXXXVI.

AN ACT FOR REGULATING THE PROCEEDINGS ON BONDS OF ADMINISTRATORS ON INTESTATE ESTATES.

Whereas in and by an act or law of this province, made in the fourth year of the reign of king William and queen Mary, intitled an act for the settlement and distribution of the estates of intestates, the judges for probate of wills and granting of administrations in the respective counties are required to take bond of such person or persons to whom they grant the administration of the estate of any intestate, and it sometimes happens that such judges do put those bonds in suit and distribute the sums recovered thereon to and among the parties interested in such manner as in and by the said act is directed, and whereas it has happened that, after such distribution as aforesaid, the administrator has brought his action of review, and thereupon obtained a reversal of the former judgment, in which case the respective judges of probate are liable to an execution, and thereby exposed to great charge and inconvenience, for remedy whereof,

Execution to be stayed upon judgment recovered by the judge of probate.

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when any of the judges for the probate of wills and granting of administrations shall put in suit any administrator's bond, and recover a judgment for the penalty therein expressed, or any part thereof at any in-

feriour court of common pleas or superiour court of judicature, execution of such judgment shall be staid until the next session of the court whereat the same was obtained, that so such administrator may then, if he see cause, have an opportunity to review his action; and if he shall neglect so doing, execution shall thereupon be awarded, and the judge for probate shall make distribution of the sum recovered to and among the parties interested therein, agreeable to the direction of the law, and every such administrator is hereby for ever precluded and barred from bringing any such action afterward.

CHAPTER CLXXXVII.

AN ACT IN EXPLANATION OF AND FURTHER ADDITION TO AN ACT, INTITLED AN ACT FOR REGULATING OF TOWNSHIPS, CHOICE OF TOWN OFFICERS, AND SETTING FORTH THEIR POWER.

WHEREAS in and by an act made and passed in the fourth year of king William and queen Mary, intitled an act for regulating of townships, choice of town officers, and setting forth their power, it is provided, "that the bounds of all townships shall be run betwixt town and town, and marks renewed once in three years by two of the selectmen of each town, or any other two persons whom the selectmen shall appoint, the selectmen of the most ancient town to give notice to the selectmen of the next adjacent towns of the time and place of meeting for such perambulation six days before hand, on pain of forfeiting five pounds by the selectmen of any town that shall neglect their duty in any of the particulars aforesaid, two thirds thereof for the use of the poor of such town, and the other third unto the selectmen of any of the next adjacent towns that shall inform and sue for the same in the inferiour court of common pleas within the same county," whereupon some disputes have arisen as to the disposition of the said forfeiture of five pounds, for prevention whereof, and that the said act may be rendered more effectual,

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when the selectmen of any town within this province, whose duty it is by the said act to give notice unto the selectmen of the next adjacent towns of the

Forfeiture for not perambulating town bounds.

time and place of meeting for perambulating the bounds betwixt them, shall neglect their duty in that particular, they shall forfeit and pay the sum of fifteen pounds; and if the selectmen of any town within this province shall, upon notice given as aforesaid, refuse or neglect by themselves or others by their appointment to meet and perambulate such bounds, although they may be the bounds between county and county, they shall forfeit and pay the sum of fifteen pounds; the said fines or forfeitures to be disposed of, one third to the selectmen or other person of the town, which is not negligent of their duty in this behalf, who shall inform and sue for the same, and the other two thirds to the use of the poor of the town of which they are selectmen; the said fines or forfeitures respectively to be recovered in any court of common pleas within the county where either of the said towns lie.

How to be disposed of.

CHAPTER CLXXXVIII.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT FOR THE SETTLEMENT AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

WHEREAS in and by an act made and passed in the fourth year of the reign of king William and queen Mary, intitled an act for the settlement and distribution of the estates of intestates, "the judges of probate of wills and for granting letters of administration of the estates of intestates are to settle the estate both real and personal, one third part of the personal estate to the wife of the intestate for ever, besides her dower or thirds in the housing and lands during life, where such wife shall not be otherwise endowed before marriage, and all the residue of the real and personal estate by equal portions to and among his children, and such as shall legally represent them, &c." but sufficient provision is not made for the settlement of the estate on the grandchild or grandchildren, where one or more of the children of the intestate are deceased, for want thereof considerable difficulties have arisen and may arise, for remedy whereof,

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the several judges of probate of wills and for granting administration on the estates of intestates, where any of the children deceased in the life time of the intestate, and left issue, shall make a full settlement of

Manner of settling intestate estates on grandchildren.

the estate in manner following, viz. on the grandchildren, that part which their deceased father or mother would have had or taken, if living at the time of the intestate's decease, and shall settle two shares or a double portion on the eldest son, if any be, and so in the same manner and proportion as if the same had descended from their immediate father or mother, and shall follow the same rules as to settling the lands upon one or more of the grandchildren, (as the same are capable of making settlements) according to the directions of the law of this province, viz. an act made in the sixth year of king George the first, chap. III. directing to give preference to the sons.

Provided always, this act shall not extend to affect the title of any estate already settled. Proviso.

CHAPTER CLXXXIX.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT FOR THE HEARING AND DETERMINING CASES IN EQUITY, MADE AND PASSED IN THE TENTH YEAR OF THE REIGN OF KING WILLIAM THE THIRD.

WHEREAS the conditions annexed unto bonds and other specialties are sometimes for the payment of monies or the performance of other matters and things at different times, and when upon the first breach of such condition the bond or specialty has been put in suit, it has been apprehended that the courts of justice, even in equity, can chancer such bonds or specialties to so much only of the debt or other collateral matters to be performed, as is become due at the time of the action brought, whereby the obligee may meet with difficulty to recover his debt as it shall become due,

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when any action shall be brought and prosecuted on any bond or other specialty with penalties for the payment of sums of money, performance of covenants, contracts, agreements, matters or things to be done at several times, and the plaintiff recover the forfeiture of such penalty, the court shall enter up judgment for the whole of such forfeiture, and award execution only for so much of the debt or damage as is due or sustained at that time, so always that the said judgment shall stand and be a security to the plaintiff, his executors and administrators for any further

Judgment to be made up for the whole penalty of bonds where there are divers payments &c.

and after payments or damages he or they may have a just right to, by the non-performance or breach of the covenants, contracts, agreements or things in such bonds or other specialties contained, and may have a writ or writs of scire facias on said judgment, from such courts where the same was obtained, against the defendant, his heirs, executors or administrators, suggesting other and further damages sustained by the non-performance or breach of such covenants, contracts and agreements, and to summon him or them to shew cause why execution should not be awarded upon said judgment for other and further damages, as set forth in the writ and made out to the court, upon which the said court shall proceed as aforesaid, and so toties quoties, or as often as such damages shall accrue, and to be sued for as aforesaid.

Writs of scire facias to be issued thereon from time to time as any thing becomes due.

CHAPTER CXC.

AN ACT DIRECTING HOW MEETINGS OF PROPRIETORS IN WHARVES OR OTHER REAL ESTATE BESIDES LANDS MAY BE CALLED.

WHEREAS the laws of this province have empowered not only the proprietors of common lands but of any other estate or interest to sue or be sued, but no direction being given how a meeting of such proprietors may be called, and whereas by reason of the death or refusal of any or the major part of the committee, empowered to call meetings of proprietors in wharves or other real estates, the said proprietors may be under difficulties, for remedying the same,

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as five or more of the proprietors in any wharves or other real estate or interest whatsoever shall judge a proprietors' meeting necessary, and shall make application to a justice of the peace within the county where such real estate or interest lies, such justice is hereby empowered to grant a warrant for such meeting, directed to one of the proprietors asking the same, requiring him to notify the proprietors of the meeting, and the time and place for the same, which notification shall be in writing, posted up in some publick place within the town where such estate lies, fourteen days before the time appointed for such meeting, and such and so many of the proprietors as shall assemble and

A justice of the peace to call a meeting of proprietors of wharves upon application.

meet together accordingly shall have power, by a major vote of the proprietors present, to choose a clerk to enter all votes and orders that shall from time to time be made at such meetings, and shall be sworn to the faithful discharge of his office, and agree upon any other method of calling meetings, also to choose a committee for managing the affairs of the propriety, and also to pass all orders and rules for the further managing, improving and ordering such estate or interest as they shall agree, the voices always to be collected according to the interest where the same is known, and no other affair to be acted at such meeting, but what is expressed in the warrant and notification of such meeting.

When suit is brought against the proprietors, the clerk to be served.

SECT. 2. And be it further enacted, that when it shall happen suit shall be brought against any proprietors in any real estate, besides lands, the plaintiff bringing forward such suit shall cause the clerk of such propriety or some principal proprietor in such estate to be served with a copy of the writ or summons, at least thirty days before the day of the sitting of the court to which the same shall be returnable.

CHAPTER CXCI.

AN ACT IN EXPLANATION OF AND FURTHER ADDITION TO THE ACT FOR MAKING LANDS AND TENEMENTS LIABLE TO THE PAYMENT OF DEBTS.

WHEREAS some doubt has arisen, whether the right which the mortgagor hath in equity to redeem such land as he has mortgaged may be legally taken, by capias or attachment upon mean process or by execution, for satisfying or paying the debts of the mortgagor, for removing whereof,

Rights of redeeming mortgages liable to be taken by the creditor of the mortgagor.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that such rights in equity of redeeming mortgaged lands heretofore have legally been, now are, and hereafter shall be liable to be taken by capias or attachment upon mean process, and by execution upon judgment recovered for the payment of the just debts of the mortgagor; and the person, at whose suit the said right by equity of redeeming such mortgaged lands is taken in execution, shall have the same and as full and ample right and power of redeeming such lands as the mortgagor himself

had or ought to have, an acknowledgment of satisfaction in the margin of the record of such mortgages, by the mortgagee or his heirs, shall be as sufficient a discharge thereof to the creditor who hath redeemed or shall hereafter redeem the same, or to his heirs, as it would have been to the mortgagor himself or his heirs.

Overplus to be returned and paid to the debtor.

Provided, that if the said right shall by appraisement in due form of law happen to exceed the sum to be levied with the necessary charges, the overplus shall be paid by the creditor to the debtor, within three months after levying the execution or publication of this act.

Executions hereon to be entered in the registry of deeds.

Provided also, and be it further enacted by the authority aforesaid, that all executions that shall hereafter be levied on lands or tenements, and the proceedings thereon, shall at the charge of the creditor, within three months after such levying, be entered in the office of the register of deeds for the county where such lands lie.

Debtor allowed a year to redeem his right.

SECT. 2. And it is further provided and enacted, that the debtor, whose right in equity as aforesaid is taken by execution as aforesaid, shall have liberty, for the space of one year next after levying such execution, of redeeming such his right by paying the full sum levied by execution on such right with lawful interest, and all charges arising thereon, and such other sum or sums as the creditor, at whose suit the execution was levied, shall have paid to the person or persons to whom it was before mortgaged, or to the mortgagor himself.

Creditor to have a good title to the land.

SECT. 3. And it is further enacted, that such person or persons, at whose suit such lands or right by equity of redeeming any mortgaged lands have been, are, or shall be taken by execution as aforesaid, shall be as legally and fully intitled to the said lands or right of redeeming the mortgage or mortgages thereof, as the original mortgagor at the time of levying the execution was, and the said lands or right of redeeming the same shall be and remain to the said creditor, and his heirs and assigns for ever, unless redeemed by the mortgagor within one year as aforesaid.

CHAPTER CXCII.

AN ACT TO EMPOWER THE COLLECTORS OF TAXES TO REQUIRE AID.

WHEREAS the collectors of the rates and taxes oft times labour under difficulty in collecting from divers persons the sums assessed on them, and sometimes are prevented ever collecting the same, for that the law doth not empower the collectors to require and take aid to assist them in distraining for the rates committed to them to collect, and apprehending persons who refuse to pay the same, which is to the publick damage, for remedy whereof,

Collectors of taxes empowered to demand aid.

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that if any of the collectors of the province, county, town and precinct rates and taxes, when in the execution of their office, shall be hindered and impeded in collecting the rates and taxes committed to them, it shall be lawful for such collectors, if need be, to require some meet person or persons to aid and assist them therein; and that all persons so required that shall refuse their aid and assistance, and shall be convict thereof, before one or more of his majesty's justices of the peace in the county where the offence is committed, shall pay a fine to be disposed of to the use of the poor of the town where the offence may arise, not exceeding forty shillings, at the discretion of the justice or justices, according to the circumstances of the offence, provided that it appear to the said justice or justices that the aid so demanded as aforesaid was necessary.

Penalty for refusing to give aid.

And if the person so convict will not pay his fine, the justice or justices may, upon refusal thereof, order such person to the common gaol of the county, there to remain a close prisoner for the space of forty-eight hours, or order him to be set in the stocks for the space of two hours.

CHAPTER CXCIII.

AN ACT FOR MAKING MORE EFFECTUAL PROVISION FOR THE SERVICE OF ORIGINAL SUMMONS UPON MEAN PROCESS.

WHEREAS in and by an act, made and passed in the thirteenth year of the reign of his majesty king William the third, it is provided, "that original process may be by summons, capias or attachment," and some disputes have arisen with respect to the manner of serving such summons, which hath been attended with many inconveniences, for remedy whereof,

Copy of an original summons left at the defendant's house to be a sufficient service.

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the service of an original summons upon any person, either in his private capacity, or in the capacity of executor or administrator, or any other qualification whatsoever, shall be as good and valid in law, to all intents and purposes whatsoever, by an attested copy of such summons being left by the officer at the house or usual place of abode of the defendant, at least fourteen days before the sitting of the court, as if he had been served therewith in his own person.

Proviso.

Provided, that if the defendant, against whom such suit is brought, be out of the province at the time of such service, he shall have the same benefit as to a continuance of the action, as is by law provided in suits where goods and other estate is attached.

CHAPTER CXCIV.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT FOR HIGHWAYS.

WHEREAS in and by an act, intitled an act in addition to an act, intitled an act for highways, made and passed in the first year of the reign of his present majesty, it is enacted, "that no private way or ways laid out by the selectmen of a town shall be esteemed private ways for such town, nor

committed to record, unless such town at their annual meeting in March shall by a major vote allow and approve thereof," but no provision is made for applying for remedy to the justices of the general sessions of the peace, when any town unreasonably refuses to allow and approve of any private way laid out as aforesaid and to put the same on record, which may be very detrimental to particular persons desiring the same, for remedy whereof,

Persons aggrieved by any town's refusing to allow a private way may apply to the general sessions for relief.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when any town shall unreasonably refuse or delay to allow and approve of any private way laid out by the selectmen, and to put the same on record, that then and in such cases any person or persons who think themselves aggrieved thereat, may have liberty to make their application to the court of general sessions of the peace held for that county in which the way lies, provided it be within twelve months from the refusal or delay of said town, who are hereby authorized and empowered, by a committee of disinterested persons whom they shall appoint, to lay out or cause to be laid out such particular or private ways within or for such town as may be petitioned for as aforesaid, so as no damage be done to any particular person in his land or propriety, without due recompense to be made, either by the town if it be of general benefit, or otherwise by such of the inhabitants as have the benefit thereof and desire the same, as shall be adjudged and ordered by the justices in their sessions as aforesaid, and said court are hereby authorized and empowered to inquire into the damages by a jury, to be summoned for that purpose, by the sheriff or coroner, as the case may require, and shall make up judgment with respect to the damages according to the verdict of that jury, which judgment shall be final.

At a great and general court held at Boston on the fifth day of December, 1739, Whereas there are many new plantations and tracts of land granted and laid out for townships, in which it is necessary that convenient ways should be laid, the proprietors whereof are not by law obliged or enabled to lay out such ways, not being vested with the privileges of towns,

Proprietors of new plantations to lay out ways.

SECT. 2. Be it therefore enacted by his excellency the governor, council and house of representatives, in general court assembled, and by the authority of the same, that the proprietors of all such tracts of land and new plantations that are already or shall hereafter be laid out for townships be and hereby are authorized and empowered, by a committee to be appointed for that purpose, to lay out convenient ways within and for such plantations as the selectmen in towns are empowered to do, and such ways to lay open, and all incumberances thereon to remove, as also to

alter or discontinue any such private way or ways as they shall judge necessary so to do.

Court of general sessions of the peace to order highways to be laid out through new plantations.

SECT. 3. And be it further enacted by the authority aforesaid, that when a highway or common road through such new plantation or elsewhere shall be wanting, the justices of the court of general sessions of the peace in the county where such lands lie, upon application to them made, may inquire into the necessity or conveniency of the way petitioned for, either by a committee from among themselves, or such other discreet and indifferent persons as they shall appoint; and if such highway or common road shall be judged by the court, upon due inquiry made as aforesaid, to be of common necessity or conveniency, they shall proceed in laying out the same, by a jury in manner as by law is already provided.

How persons are to be satisfied for damages in laying out private ways through their lands.

SECT. 4. And be it further enacted by the authority aforesaid, that the damages which any person or persons may sustain in his land or propriety, by the laying out or altering any private way in such new plantation, shall be recompensed by such proprietors, as the committee laying out the same and the party injured may agree, or as shall be ordered by the court of general sessions of the peace upon inquiry into the same by a jury to be summoned for that purpose; and when such damages shall be occasioned by the laying or altering any common road, the proprietors of the new plantation, through which such road is laid, shall make satisfaction to the person or persons injured thereby, by the estimation of the jury that laid out the same, unless upon a hearing of the person who may find himself aggrieved by the estimate of his damages made by the jury, the court shall see cause to enhance or diminish the same; and the proprietors of every such new plantation are hereby authorized and required some time in the month of March annually, until such time as they shall be vested with the privileges of a town, to choose two meet persons to be surveyors of highways, whose duty it shall be, at the charge of said proprietors, to keep the ways in such plantation in repair from time to time, and shall have the same power to impress workmen and teams, and to provide materials, as by law is given to other surveyors of highways, and be under the obligation of an oath for the faithful discharge of their trust.

New plantations to choose surveyors of highways.

At a great and general court held at Boston on the eighth day of February, 1744. Whereas it sometimes happens that some particular person or persons, for his or their own private advantage, build and erect a bridge or bridges across some river or stream, and after neglect or refuse to keep such bridge or bridges in repair, by means whereof the town or towns in which such bridge or bridges are erected have been presented, and suffered loss and da-

mage, although such town was not consenting to the building thereof, nor receive general and common advantage thereby, wherefore,

Court of general sessions to determine as to private bridges.

SECT. 5. Be it enacted by the governor, council and house of representatives, that from and after the publication of this act, upon application made to the court of general sessions of the peace by any person or persons, setting forth that any bridge or bridges that have already been erected, or that may hereafter be erected, by any particular person or persons for his or their private advantage, either in or adjacent to the town where such person or persons live, or any other town, for the building of which there was not the especial consent of the town or towns where such bridge or bridges lie, or to which they are adjacent, nor the order of the said court for building the same, nor any order or special agreement for keeping such bridge or bridges in repair, that such bridge or bridges are neglected and not kept in due repair, in every such case, upon application made as aforesaid, it shall and may be lawful for the said court either to discontinue such bridge or bridges, if the person or persons erecting them shall neglect to keep them in due repair, or otherwise finally to determine how, in what manner, and by whom such bridge or bridges shall be repaired and maintained, whether at the charge of the person or persons that built the same, their heirs, or such other person or persons as live near and reap the principal advantage of such bridge or bridges, as the said court shall judge most reasonable, and make out such orders and assessment on any particular person, persons or towns, as shall be found necessary for effecting such repairs from time to time, and if need be to award execution thereon, in such manner as the circumstances of the case may require, to which orders, assessments and executions, all proper officers and other persons are hereby directed to conform.

At a great and general court held at Boston on the twenty-seventh day of August, 1746, Whereas in and by an act, made in the twelfth year of the reign of her late majesty queen Anne, intitled an act in addition to the law of this province, intitled an act for highways, made in the fifth year of the reign of the late king William and queen Mary, provision is made for the laying out particular private ways between any inhabitants or proprietors within their respective towns to or for any original lot, but no power or liberty is therein given for the laying out any such way to any tract of land that is not an original lot, which is often times equally necessary, wherefore,

SECT. 6. Be it enacted by the governor, council and house of representatives, that the selectmen of each town respectively, and in case of their delay or refusal his majesty's

Selectmen, and in case of their refusal, the justices, empowered to lay out highways.

justices of the peace within the several counties of this province at any of their general sessions, be and hereby are fully authorized and empowered by themselves or others to lay out or cause to be laid out particular or private ways as shall be thought necessary to or for any tract of land, not an original lot, as they are by said act of queen Anne, for an original lot, under the same regulations and restrictions, and observing the same rules as are therein specified, directed and provided.

CHAPTER CXCV.

AN ACT IN FURTHER ADDITION TO AN ACT DIRECTING THE ADMISSION OF TOWN INHABITANTS, MADE AND PASSED IN THE THIRTEENTH YEAR OF THE REIGN OF KING WILLIAM THE THIRD.

No strangers to be entertained in a town above twenty days without giving notice to the selectmen, &c.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the inhabitants of the several towns within this province, who shall receive, admit and entertain any person or persons not being inhabitants of such towns, either as inmates, boarders or tenants in the house where such person dwells, or in any other house of his whatsoever, within this province, or under any other qualifications for more than the space of twenty days, and shall not in writing under their hands give an account to one or more of the selectmen or the town clerk of such town of all such person or persons so received, admitted or entertained by them, with the time they first received them, and the place from whence they last came, together with their circumstances as far as they can, shall for every such neglect forfeit and pay the sum of forty shillings, to be recovered by bill, plaint or information, before any justice of the peace, or in any of his majesty's courts of record within this province, the one half of the said fine to be employed to and for the use of the poor of the town where such offence shall be committed, the other half to him or them that shall inform and sue for the same; and they shall be liable to answer all charges that may arise in the said town, by receiving and entertaining such person or persons as aforesaid, to be recovered by the town treasurer, or selectmen where no town

Penalty.

treasurer is appointed, who are hereby respectively empowered to bring an action accordingly.

Charge of warning persons, how to be paid.

Sect. 2. And be it further enacted by the authority aforesaid, that all cost and charges arising by warning any such persons as are not inhabitants out of town, entering the caution, or carrying them out of town, shall be defrayed and paid by those who received and entertained such person or persons in their houses as aforesaid, and shall be recovered by the town treasurer, or selectmen where no treasurer is appointed, who are hereby respectively empowered to bring an action accordingly.

Account of charge to be exhibited by the town treasurer or selectmen.

And the town treasurer or selectmen of the respective towns in this province are hereby directed and ordered, before they bring their action, to exhibit to such who receive and entertain any person or persons in their houses as aforesaid, an account of the charge arising thereby; and upon refusing to pay the same within five days, they shall be liable to pay said charge, and be deprived of any benefit by their notification, though given within the twenty days as aforesaid.

CHAPTER CXCVI.

AN ACT FOR THE MORE EFFECTUAL PREVENTING AND PUNISHING OF THEFT.

Whereas the punishments already provided by law against stealing have proved ineffectual, and even those that have suffered the penalty in such cases have been so bold and hardy as to perpetrate their wickedness a second and even a third time, for the more effectual preventing whereof,

Second theft to be punished by sitting on the gallows and whipping.

Sect. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the first day of May next, if any person who stands convict upon record, either before a justice of the peace, or in any court of general sessions of the peace within this province for stealing, shall after that presume to steal any money, goods or chattels to the value of forty shillings lawful money, and be thereof convict by due course of law before the court of assize and general gaol delivery holden within any of the counties of this province, he or they for such offence shall, besides paying treble the value of such money, goods or chattels so stolen to the party injured, together with cost and charges of prosecution, be set upon the gallows for the space of one hour, with a rope about his neck, and one end

thereof cast over the gallows, and be severely whipt, not exceeding thirty stripes.

Third theft to be punished with death.

SECT. 2. And be it further enacted by the authority aforesaid, that if any person, convicted of a second theft in manner as aforesaid, shall presume a third time to steal any money, goods or chattels to the value of three pounds lawful money, and be thereof convict by due course of law, he shall be adjudged to suffer the pains of death, without benefit of clergy.

CHAPTER CXCVII.

AN ACT FOR THE BETTER REGULATING OF THE SERVICE OF EXECUTIONS, AS WELL BY SHERIFFS AS CORONERS, MORE ESPECIALLY IN THE REMOTE COUNTIES OF THE PROVINCE.

WHEREAS the superiour court of judicature, court of assize and general gaol delivery sits but once in the year in many of the counties of this province, so that executions upon judgments obtained in those counties at the superiour court are returnable but once a year, whereby the creditor is or may be kept for a long time out of his just debt, while in the other counties of the province the writs are returnable every six months,

Executions to be returnable in six months.

SECT. 1. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, the clerks of the superiour court of judicature, court of assize and general gaol delivery are hereby authorized and directed to make all executions on judgments obtained at the said courts in such counties where the said court sits but once in the year returnable into the clerk's office at the end of six months from the date thereof, and the clerks of said courts are further authorized, upon the return of such execution, to renew or make out an alias execution for the whole or the remainder, as the case may be, returnable at the next superiour court to be held in and for such county.

Alias executions then to be made out in case.

And whereas it has been thought warrantable for the sheriff or coroner that have by virtue of executions to them committed, after they have taken the whole or part of the debt, to detain the same from the creditor until the return of the execution, for remedy whereof,

SECT. 2. Be it further enacted by the authority aforesaid, that when and so often as any sheriff or coroner shall have levied or taken the whole or part of the debt by virtue of the execution, he shall, within twelve hours after the receipt of said money, deliver the same to the plaintiff, creditor, or any person authorized by him, upon demand being made thereof in the town where the officer dwells, and in case the demand is made in another town in said county, then he shall be allowed forty-eight hours to pay the same, and upon his neglect or refusal as aforesaid, shall forfeit to the creditor treble the lawful interest of the sum so taken and detained by the sheriff or coroner, being convicted thereof before the court where the writ of execution is returnable.

Money levied by execution not to be detained in the officers' hands.

Penalty for detaining it when demanded.

CHAPTER CXCVIII.

AN ACT OBLIGING THE CORONERS WITHIN THE SEVERAL COUNTIES OF THIS PROVINCE TO GIVE SECURITY FOR THE DUE PERFORMANCE OF THEIR OFFICE.

WHEREAS, by virtue of several acts or laws of this province, the coroners of the counties are enabled in some cases to serve and execute writs in civil actions, as well original as judicial, but are not obliged to give bond for the faithful discharge of that trust, whereby the creditor or plaintiff in such process may be in danger of suffering damage,

SECT. 1. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the twenty-fifth day of March, which will be in the year of our Lord one thousand seven hundred and thirty-seven, no coroner shall have authority to serve any process or writ, original or judicial, though to him directed, until such time as such coroner shall have given sufficient security for his faithful behaviour in the serving and executing all such writs as aforesaid as shall be committed to him, pursuant to the laws of this province, to the satisfaction of the general sessions of the peace in the county where such coroner lives, the bond to be made payable to the treasurer of such county, for the use and benefit of the person or persons that may be injured by the failure of the coroner in that behalf.

Coroners to give bond before they serve writs.

Coroners answerable for their deputies.

SECT. 2. And be it further enacted by the authority aforesaid, that the several coroners within this province shall be answerable in the law for their respective deputies, in the same manner that the sheriffs within this province are answerable by law for their respective under-sheriffs and deputies, with respect to the due execution of their office.

CHAPTER CXCIX.

AN ACT FOR SECURING THE SEASONABLE PAYMENT OF TOWN AND PRECINCT RATES OR ASSESSMENTS.

WHEREAS the method directed to by law, and heretofore practised by the receivers or treasurers of towns and precincts, hath been to sue for and recover town and precinct rates and assessments, or the arrears thereof, by mean process against the constables or collectors to whom they were committed to be gathered, who neglected their duty therein, whereby the payment of such rates or assessments into the respective town or precinct treasuries hath been greatly delayed, to the grievous damage of many places, to prevent which for the future,

Warrant of distress to be issued against defective collectors.

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, if the constable or collector of any town or precinct within this province, to whom any town or precinct rates or assessments have been committed to collect, shall be remiss in his duty, by law required, and neglect to collect such rates and assessments as have been committed to him to collect, and to pay in the same to the treasurer or receiver of such town or precinct, by the time fixed in the warrant to him directed, or within one month next after the expiration thereof, such treasurer or receiver is hereby empowered by warrant under his hand and seal, directed to the sheriff of the county or his deputy, who are hereby respectively directed and empowered to execute the same, to cause such sum or sums of money as such constable or collector hath not paid in to be levied by distress and sale of his estate real or personal, returning the overplus, if any there be, and for want of such estate, to take the body of such constable or collector, and to imprison him until he pay the same.

CHAPTER CC.

AN ACT IN FURTHER ADDITION TO AN ACT MADE IN THE FIRST YEAR OF HIS PRESENT MAJESTY'S REIGN, INTITLED AN ACT, TO PREVENT COPARCENERS, JOINT TENANTS AND TENANTS IN COMMON, FROM COMMITTING STRIP AND WASTE UPON LANDS BY THEM HELD IN COMMON AND UNDIVIDED.

WHEREAS in some towns in this province there are lands lying in common and undivided, belonging either to some town or to the proprietors of such common or undivided land, which cannot without much inconvenience be divided, yet such land would be profitable to the town or proprietors for raising wood and timber, in case it were under the government of the owners, and particular persons could be restrained from making waste by cutting poles and young wood, &c.

Therefore, for rendering such lands more useful to the owners for the future,

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, no person or persons whatsoever, belonging to such town, or having a right in such common or undivided lands, shall or may without leave from the owners of such lands, as is hereafter directed, either by himself, son, servant or any other person, cut, fell, destroy or carry away any trees, timber, poles, wood or underwood, whatsoever, standing, lying or growing on such common and undivided lands as aforesaid, under the penalties and forfeitures as are provided by an act made in the twelfth year of king George the first, chap. v. intitled an act in addition to, and for rendering more effectual an act, made in the tenth year of the reign of king William the third, intitled an act for preventing of trespasses.

Tenants in common, &c. forbidden to make strip and waste.

SECT. 2. And be it further enacted by the authority aforesaid, that if any person or persons, from and after the publication of this act, shall presume to dig up or carry off from any such common and undivided lands as aforesaid, any stone or ore without leave as aforesaid, he or they shall forfeit and pay treble the value thereof. Provided nevertheless, that it shall be in the power of the town who are the owners of such common or undivided lands, by a major vote, in a town meeting for that purpose appointed, to allow

Penalty for digging stones &c. without leave of the proprietors.

Proviso.

of and give liberty to any of the inhabitants of such town, or of the proprietors of any such lands lying in common or undivided, in a meeting of the proprietors for that purpose, to allow of and give leave to any of the proprietors of such lands respectively, to cut and carry off any trees, poles, wood, or underwood, stone or ore from such land, under such limitations and restrictions as such town or proprietors shall agree upon. Provided, that in such proprietors' meeting, all the votes shall be computed by the interest where each proprietor's interest is stated, and the liberty of cutting and other improvements of the proprietors to be in proportion to their several and respective interests. And all the votes of allowance or liberty shall be fairly recorded in the town or proprietors' books respectively, that all persons may know the liberty thereby given them. The penalties and forfeitures arising by virtue of this act to be recovered before any of his majesty's justices of the peace, where the penalty exceeds not forty shillings, or in any of his majesty's courts of record within the county where the offence is committed, as the value of the damage may be, by action, bill, plaint or information, to be brought and prosecuted by any one or more of the persons that the town or proprietors interested shall choose to manage the same, or by any inhabitant of such town, or by any proprietor of such common and undivided lands, in case the town or proprietors shall neglect to choose such prosecutor, or being chosen he shall neglect to prosecute as aforesaid, the whole of such penalties and forfeitures to be to the use and benefit of such town who are owners of such lands, or to the proprietors interested as aforesaid.

Proviso.

Manner of prosecution.

SECT. 3. And be it further enacted by the authority aforesaid, that in all offences against this act, the offender or offenders shall be liable to a conviction in the same manner as is already provided in the aforesaid act, made in the twelfth year of the reign of king George the first, chap. v.

CHAPTER CCI.

AN ACT IN FURTHER ADDITION TO AN ACT, INTITLED AN ACT FOR THE RELIEF OF IDIOTS AND DISTRACTED PERSONS.

WHEREAS the provision made in and by an act made and passed in the sixth year of the reign of king William and queen Mary, intitled an act for the relief of idiots and distracted persons, only respects such idiots, persons non compos, or distracted, whose near relations refuse to undertake the care of providing for them, and whose circumstances may finally require the sale of their lands, or their persons to be put out to labour, in order to prevent any charge to the town where such distracted person or idiot is an inhabitant, and no method prescribed in the said act how it may be inquired of and known whether the person said to be a lunatick, idiot or non compos be so or not, and for the securing the estate of such idiot or distracted person from embezzlement,

Judges of probate to inquire of idiots or distracted persons.

SECT. 1. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that it shall be in the power of the judges for the probate of wills and for granting letters of administration for and within the respective counties in this province, from time to time, upon request made by the relations or friends of any idiot, non compos, lunatick or distracted person, or the overseers of the poor in such town where the said idiot or distracted person lives or is an inhabitant, to direct the selectmen of such town to make inquisition thereinto; and if the person said to be an idiot or distracted shall be so determined by the judge of probate of the county and selectmen of the town, or major part of them, wherein such idiot or distracted person lives, then and in that case such judge of probate shall assign and appoint some suitable person or persons to be guardian or guardians of such idiot or non compos, directing and empowering such guardian or guardians to take care as well of the person as estate, both real and personal, of the said idiot or distracted person, and to make a true and perfect inventory of the said estate, to be returned to and filed in the register's office of the courts of probate in the respective counties within this province.

Judges of probate to appoint guardians of idiots or distracted persons.

To put persons upon oath suspected of

SECT. 2. And be it further enacted by the authority aforesaid, that the judges for the probate of wills and granting administrations within the respective counties be and hereby are fully authorized and empowered to call before them,

embezzlement of the estates of idiots or distracted persons.

and to require and administer an oath unto any person or persons probably suspected of making any concealment, embezzlement or conveying away any of the money, goods or chattels of any such idiot, non compos, lunatick or distracted person, as well upon the complaint of any heir, creditor, or other person, having lawful right or claim to or in such estate, as of the said guardian or guardians; and in case any such suspected person was betrusted by the said idiot, non compos, lunatick or distracted person, or was otherwise conversant with, or near unto him in the time of his lunacy or distraction, or is in possession of the estate, or any part thereof, whereby to strengthen and make the suspicion more violent, and shall refuse to clear and acquit him or herself upon oath, it shall and may be lawful for the judges of probate, and they are accordingly empowered and directed to commit such person so refusing to swear unto the gaol of the county, there to remain until he or she shall comply to discharge him or herself upon oath as aforesaid, or be released by consent of the guardian or guardians, heir, creditor, or other person having lawful right or claim to or in such estate as aforesaid.

Persons refusing to swear to be committed to prison.

Sect. 3. And be it further enacted by the authority aforesaid, that the guardian or guardians appointed as aforesaid shall improve frugally and without waste and destruction the estate of the idiot, non compos, lunatick or distracted person, and apply the annual profits and incomes thereof for the comfortable maintenance and support of the said idiot, lunatick, non compos or distracted person, and also of his household or family, if any such he have, and that the said guardian and guardians be and hereby are empowered to settle accounts, receive, and (if need be) sue for and recover all such just debts as shall be due to the said idiots, persons distracted or non compos, from any person or persons whomsoever, and to manage, improve, divide or take care of the real estate of such idiot, person distracted or non compos, in as full and ample a manner as the said persons could or might do were they restored to their right mind, and also shall be subject to the payment of all such just debts owing by such persons, which were contracted before their distraction, out of the personal estate of such idiot, persons non compos or distracted, or (in case that be not sufficient) then out of the real estate, being first empowered to make sale thereof, or of such part thereof as is sufficient for that end, by the justices of the superiour court of judicature, upon application to them made therefor; and in case the said distracted persons shall come or be restored to their right mind, the residue of his or her estate both real and personal shall be delivered or returned to them, or to their respective heirs, executors or administrators as the law directs, the guardian or guardians having first such a reasonable al-

Guardians to be allowed for their trouble and charge.

lowance out of the same for their charges and trouble as the judge of probate shall order.

Guardians to give bond.

SECT. 4. And be it further enacted by the authority aforesaid, that the guardian or guardians appointed as aforesaid shall give bond to the judge of probate for the time being, in a reasonable sum, with sufficient sureties for the faithful discharge of the trust in them reposed, more especially for the rendering a just and true account of their said guardianship, when and so often as they shall be thereunto required; saving always the right of appeal to the governor and council, as is practised in other cases from the sentences or decrees of the judges of probate.

Saving the right of appeal.

CHAPTER CCII.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT DIRECTING HOW RATES AND TAXES, TO BE GRANTED BY THE GENERAL ASSEMBLY, AS ALSO COUNTY, TOWN AND PRECINCT RATES, SHALL BE ASSESSED AND COLLECTED.

WHEREAS in and by an act, made and passed by the great and general assembly in the fourth year of his majesty's reign, it was provided, "that when and so often as the treasurer of the province shall send out his warrant of distress against any defective constables, sheriff or under-sheriff, the officer executing the same shall distrain and levy the lands or tenements of said defective constable, sheriff, or his deputy for their or any of their defaults, in not collecting or not paying into the treasury any sum or sums of money which ought to be by them collected, levied and paid in as aforesaid, and cause due appraisement to be made of any houses or lands so levied, by the oath of two or three freeholders in the same county, which oath any justice of the peace is hereby empowered to administer, and after appraisement to make sale of such houses and lands, and give good and lawful deed or deeds for the same," which appraisement and sale not being sufficient to secure the province, county or towns where such lands or tenements lie,

Houses and lands of defective constables, &c. taken on execution to be sold.

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when and so often as any warrant of distress shall be sent forth by the treasurer of the province, or treasurer of any county, town or precinct, to the sheriff or his deputy, or to the coroner, to levy the lands or tenements of any defective constable, sheriff or deputy, in such case it shall be lawful for the officer executing such warrant of distress, upon appraisement made as aforesaid, to make sale of such houses and lands to the highest bidder, and give good and lawful deed or deeds for the same, having first given publick notice of time and place of sale, at least thirty days, in the town where such lands or tenements lie, as also in the two adjacent towns; and in case the produce of such houses or lands shall not satisfy the sum or sums mentioned in said warrant or warrants of distress, together with reasonable charges arising thereon, then the treasurer sending forth such warrant shall issue an alias execution or warrant for such remaining sum or sums, and the officer executing the same, for want of estate, shall take the body of such defective constable, sheriff or deputy, and him commit unto his majesty's gaol in the county whereto he belongs, until he shall pay the same.

And if not sufficient, the body of such constable, &c. to be taken.

CHAPTER CCIII.

AN ACT FOR THE MORE EFFECTUAL OBLIGING OF EXECUTORS TO INVENTORY THE ESTATE OF THEIR TESTATORS.

WHEREAS, notwithstanding the provision by law heretofore made, executors many times refuse to inventory the estate of their testators, to the great disadvantage and injury of the creditors and legatees of the deceased,

Executors to give in an inventory.

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that every executor that hath or shall take that charge upon him, and against the tenor of the law in that case provided shall hereafter neglect to give in a full and true inventory of the whole estate of the deceased, so far as is then come to his hands or knowledge, being duly served with a citation from the judge of the probate for that purpose, shall stand chargeable with all the debts and legacies of his testator, as his own proper debts, and over and above the penalty already provided, shall for-

feit the sum of one hundred pounds a month, for every month's neglect thereof, to be recovered by any uncertain or residuary legatee of the said testator, by action of debt, bill, plaint or information in any court of record, and to be equally divided between the said uncertain and residuary legatees, excluding such executor from any part thereof. Penalty of one hundred pounds for each month's neglect.

CHAPTER CCIV.

AN ACT IN EXPLANATION OF SUNDRY ACTS HERETOFORE MADE, REFERRING TO THE ADMISSION OF TOWN INHABITANTS.

NOTWITHSTANDING the provision made by the act passed in the twelfth and thirteenth years of king William the third, intitled an act directing the admission of town inhabitants, "that no town shall be obliged to be at charge for the support of any person residing there, unless such person have continued in such town, without being warned to depart thence, by the space of twelve months, or else have obtained the approbation of the town, or the selectmen thereof for his dwelling there," yet, inasmuch as it is not expressly declared in what way and manner such approbation shall be given, some doubt hath thereupon arisen, whether the selectmen or assessors in any town their rating or assessing any person residing there to town charges, and the inhabitants reaping the benefit of his rate, ought not, within the meaning of the said act, to have the force of an approbation for such persons dwelling there, so far as to subject such town to the charge of his support in case he stands in need, by means whereof sundry disputes and expensive lawsuits have arisen and may arise, unless prevented by this court,

SECT. 1. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that no town shall be obliged to be at charge for the support of any person resident in such town that hath not continued there so long as to become an inhabitant, unless he have obtained the approbation of the town, at a meeting of the inhabitants regularly assembled, or the approbation of the selectmen, at their meeting, for his dwelling there, such approbation of the selectmen to be given in writing under their hands or under the hands of the major part of them; and no act of the selectmen or assessors in rating or assessing any such person unto any charges

When persons to be esteemed inhabitants of any town.

Their being rated not to make them so.

whatsoever shall subject such town to any expenses for his support.

And whereas upon the first paragraph in the act made in the fourth and fifth years of his present majesty's reign, and likewise that made in the tenth year of the same reign, directing the admission of town inhabitants, which relates to the charges which the inhabitant of any town shall be liable to answer, who shall admit and entertain any person, not being an inhabitant of such town, in his house as tenant or otherwise, for more than twenty days, and shall not in writing give such account to one of the selectmen or town clerk of such town, as in said act is prescribed, a doubt hath arisen, whether the words, all charges, are to be construed to extend to the charges of supporting the persons so received and entertained, which may arise after he shall have continued in such town so long as to become an inhabitant,

SECT. 2. Be it therefore declared and enacted by the authority aforesaid, that the words, all charges, in the said paragraph do extend to and include the charge of supporting the person so received and entertained, after he shall have continued his residence in such town so long as to become an inhabitant, and that such charges may be recovered at any time after they have arisen, although the term limited for the continuance of the said act or acts may (at the time of bringing the suit) be expired.

Forbearance of the selectmen to warn persons out of town not to excuse those that entertain them.

SECT. 3. And it is hereby further declared and enacted by the authority aforesaid, that no forbearance of the selectmen to warn the person received and entertained as aforesaid to depart the town shall free the inhabitant of such town by whom he was admitted and entertained from the charge aforesaid, who shall violate the said act by neglecting to give account or notice in manner as is therein directed. And each person offending, in violation of said act, shall be liable to answer the whole of the charge incurred for the relief of the person by him admitted and entertained as aforesaid; and all such charges are and ought to be understood and accounted to have arisen and accrued to the town by reason only of such his misdeed and neglect; any others in like manner offending notwithstanding.

And that the several acts aforesaid, are and were intended as herein explained, and ought always so to be understood and put in execution.

CHAPTER CCV.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT IN FURTHER ADDITION TO THE SEVERAL ACTS OR LAWS OF THIS PROVINCE RELATING TO THE OFFICE AND DUTY OF A CORONER.

WHEREAS some of the coroners within this province have of late greatly multiplied their deputies, and under colour of such deputation persons have pretended to be exempted from duties and services whereto by law they are liable,

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the first day of March next, no coroner shall have power to appoint a deputy otherwise than for a particular necessary occasion, and after such deputy's service therein his power shall cease; and that all deputy coroners that may have received a general deputation before the said first day of March, their deputation shall be of no force or virtue after the said term, but shall then cease and be determined, and no person, under pretence of any such deputation, shall be excused from any duties or services whatsoever which he may by law be otherwise obliged or liable to.

Coroners not to appoint deputies but for particular occasions.

No coroner's deputies to be excused from duties.

CHAPTER CCVI.

AN ACT FOR LIMITATION OF ACTIONS, AND FOR AVOIDING SUITS IN LAW WHERE THE MATTER IS OF LONG STANDING.

WHEREAS it is highly reasonable, and conduces much to the peace and welfare of the subject, that a certain and reasonable time should be set for the prosecuting of actions,

SECT. 1. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the several actions hereafter mentioned, which shall be brought at any time after the end of this present session of the general court, shall be commenced within the time and limitation

Time limited for bringing actions.

hereafter expressed, that is to say, actions of trespass upon lands, or quare clausum fregit, within five years next after the cause of such actions or suits, and not afterwards; all actions for arrearages of rent, or grounded upon any lending or contract without specialty, all actions upon the quantum meruit, or for service, within the space of four years next after the cause of such actions or suits, and not afterwards; all actions of trespass, of assault, menace, battery, wounding or imprisonment, all actions for malicious prosecution, within two years next after the cause of such actions or suits, and not afterwards; and all actions of detinue, deceit, trover, trespass and replevin for taking away goods and chattels, within the term of three years, and not afterwards; and all actions of slander or for words, within one year next after the words spoken, and not afterwards.

Actions where the cause arises before the publication of this act, when to be brought.

Provided however, that each and every of the actions before mentioned, the cause whereof hath arisen before the publication of this act, may be commenced in the like term of time from the publication hereof, as herein before is set and limited, for bringing such action or actions respectively from and after the cause thereof.

Regulation of the costs in several kinds of actions.

SECT. 2. And be it further enacted by the authority aforesaid, that in all actions of the case for slanderous words, all actions of assault and battery, all actions for false imprisonment, and all actions for malicious prosecution, to be sued or prosecuted in any of the courts of record within this province, if the jury upon the trial of the issue in such action do find or allow the damage under forty shillings, the plaintiff or plaintiffs in such action shall have and recover only so much costs as the damage so given amount unto, without any further increase of the same.

Proviso referring to infants, &c.

SECT. 3. Provided always, and be it further enacted, that this act shall not be understood to bar any infant, feme covert, person imprisoned, beyond the seas, or non compos mentis, from bringing either of the actions before mentioned within the term before set and limited for bringing such action, reckoning from the time that such impediment shall be removed.

CHAPTER CCVII.

AN ACT TO PREVENT STRIP AND WASTE ON LANDS, WHILE SUITS ARE DEPENDING IN THE LAW FOR THE SAME.

WHEREAS it often happens that persons are in possession of lands to which they have no title, and the owners or proprietors thereof are obliged to bring their writ of ejectment to recover their title and possession of such land, and the tenants in possession, or some others under them, after such writs are brought, and before final judgment and possession is had, make great strip and waste to the great prejudice of the legal owners and proprietors, &c. for prevention whereof for the future,

No trees or poles to be cut down on any land in suit.

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, if any person or persons shall bring forward and prosecute any writ of ejectment for the recovery of the possession of any lands and real estate which shall be unjustly withheld from him or them by any person, and such person in possession, or any other persons whatsoever, during the time such writs or suits are depending in the law, shall presume to make strip or waste by cutting, felling or destroying the wood, timber, trees or poles standing or growing on such land sued for, shall for every such offence forfeit and pay to the party aggrieved twenty shillings for every tree of one foot diameter, over and above the true value thereof, and for every tree or pole under that dimension cut, felled or destroyed as aforesaid, twenty shillings, to be recovered by action, bill, plaint or information in any court of record proper to try the same, after the plaintiff or defendant has recovered his title and possession of such estate sued for.

Penalty.

CHAPTER CCVIII.

AN ACT IN FURTHER ADDITION TO AN ACT FOR REGULATING OF FENCES, &c.

WHEREAS in and by an act made in the fifth year of king William and queen Mary, intitled an act for regulating of fences, &c. provision is made for the making and maintaining of fences betwixt party and party, and what fences, brooks, rivers, ponds or creeks, in the judgment of the fence viewers shall be accounted sufficient fences, but whereas the parting line or bounds between one man's land and another often happens to be some small brook, river, pond or creek, which of itself is not a sufficient fence, neither is it practicable for the owners of said lands to fence in the middle thereof, which is the line betwixt them, and it sometimes happens that the owners of the land on one side will not help the other make and maintain the fence for a partition fence on either side thereof, in which case the law has made no provision,

How fences are to be ordered when lands are divided by a brook, river, pond or creek.

SECT. 1. Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that if at any time after the publication of this act, it shall happen that the lands under improvement of two persons, each being bounded on or by a brook, river, pond or creek, which of itself in the judgment of the fence viewers is not a sufficient fence, nor is it practicable for the partition fence betwixt them to be made in the middle thereof, which may be their real bounds, if in such case it shall happen that the owner or owners of the land on one side shall refuse to join with the owner or owners of the land on the other side in making and maintaining the fence for their partition fence on the one side or the other, in that case on complaint or information made to two or more of the fence viewers of the town or towns where such lands lie, shall forthwith repair to the said place, and view the said brook, river, pond or creek; and if in their judgments the said brook, river, pond or creek of itself is not a sufficient fence, and that it is impracticable to fence in said brook, river, pond or creek, that then the fence viewers shall adjudge and determine how or on which side thereof the fence shall be set up and maintained, or whether partly on one side, and partly on the other, in such manner as may be most beneficial and least prejudicial to the parties; and that on the neglect or refusal of either of said parties to erect his part or proportion of said fence

Fence viewers to order the fence in case, &c.

in such place as by the fence viewers adjudged, the said fence viewers shall forthwith procure or cause to be procured suitable stuff and materials, and therewith make and set up a sufficient partition fence between the said parties, which shall be and remain as a partition fence, and be by the said parties there maintained till by said parties otherwise ordered; and that the costs and charges thereof shall be paid by him or them, in whole or proportion, for whom the said fence is so made, and to be by the said fence viewers accordingly recovered, pursuant to an act made in the tenth year of the said king William in addition to the aforesaid act of king William and queen Mary, which said act is to be observed as a rule in all things whereto this act makes provision.

How costs are to be recovered.

Nevertheless it is provided by this act, that it shall be in the liberty of the willing party to erect his own part and proportion of said fence, pursuant to the division made by the fence viewers as aforesaid.

Proviso.

And whereas it may happen that the bound or line betwixt man and man may butt or end on or run into the sea, or some river or pond, whereby the water fence may be needful,

SECT. 2. Be it enacted by the authority aforesaid, that when and so often as it shall so happen that a water fence is needful, the said water fence from time to time shall be made and maintained by the owners of the land butting as aforesaid, in equal halves; and when it happens that either of said owners shall refuse building or maintaining his part thereof, the fence viewers, as is provided, shall do or cause the same to be done.

How a water fence is to be ordered.

CHAPTER CCIX.*

AN ACT TO ENABLE THE OVERSEERS OF THE POOR AND SELECTMEN TO TAKE CARE OF IDLE AND DISORDERLY PERSONS.

WHEREAS some idle, dissolute and vagrant persons, having some estate, and accordingly rateable, take no care of their families nor improve their estates to the best advantage, which persons are not under the care or inspection of the

*This chapter should have been inserted before, as the first part was enacted in May, 1736.

overseers of the poor or selectmen of the town where such idle persons dwell,

Idle persons having estates to be taken care of by the selectmen, &c.

SECT. 1. Be it therefore enacted by his excellency the governor, council and house of representatives, in general court assembled, and by the authority of the same, that where any idle, dissolute or vagrant persons, having a rateable estate, do neglect to take due care of themselves and their families, or to improve their estates, that in all such cases the overseers of the poor, or the selectmen of the town, shall be and hereby are empowered to take the like care and inspection of such person or persons that neglect the due care and improvement of their estates, and that mispend their time and money and that live idle, vagrant and dissolute lives, as if they were poor, indigent and impotent persons, and accordingly put out into orderly families their children, if any they have, and improve their estates to the best advantage, and apply the produce and income thereof towards the support of them and their families.

Proviso.

Provided, that any of the said idle persons, thinking themselves aggrieved, may make their application to, and have remedy from the justices in the general sessions of the peace in the same county, if they see cause, who are hereby empowered to relieve such aggrieved person from the determination of the selectmen.

At a great and general court held at Boston on the twenty-sixth day of March, 1741, Whereas the law for binding out poor children apprentices is misconstrued by some to extend only to such children whose parents receive alms, for explanation whereof,

Children whose parents are unable to maintain them and do not pay taxes, to be set to work or bound out.

SECT. 2. Be it declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the selectmen or overseers of the poor in any town or district within this province, or the greater part of them, shall take order, and are hereby empowered from time to time, by and with the assent of two justices of the peace, to set to work or bind out apprentice, as they shall think convenient, all such children whose parents shall by the selectmen or overseers of the poor, or the greater part of them, be thought unable to maintain them, whether they receive alms or are chargeable to the place or not, so as that they be not cessed to publick taxes or assessments for the province or town charges, male children till they come to the age of twenty-one years, and females till they come to the age of eighteen years or time of marriage, which shall be as good and effectual in law to all intents and purposes, as if any such child were of full age, and by indenture or covenant had bound him or herself, or that their parents were consenting thereto, provision therein to be made for the instructing of children so bound out, viz. males to read and write, females to read, as they respectively may be capable; and the selectmen or

overseers of the poor shall inquire into the usage of children so bound out, by themselves or predecessors, and endeavour to defend them from any wrongs or injuries.

And for better preventing of idleness and loose or disorderly living.

Selectmen, &c. to set to work persons that have no lawful employment.

SECT. 3. Be it further declared and enacted by the authority aforesaid, that the selectmen or overseers of the poor, or the greatest part of them, be and hereby are further empowered, by and with the assent of two justices of the peace, to set to work all such persons, married or unmarried, able of body, having no means to maintain them, that live idly, and use or exercise no ordinary or daily lawful trade or business to get their living by; and no single person of either sex, under the age of twenty-one years, shall be suffered to live at their own hand, but under some orderly family government, nor shall any woman of ill fame, married or unmarried, be suffered to receive or entertain lodgers in her house, and the selectmen, overseers of the poor, constables and tithingmen, are hereby ordered to see to the due observance of this act, and to complain and inform against any transgressors thereof to one or more justices of the peace, or the court of general sessions of the peace, who are hereby respectively required and empowered upon due conviction of the offender or offenders for living idle or disorderly, contrary to the true intent of this act, to commit or send such offenders to the house of correction or workhouse, there to remain and be kept to labour, until they be discharged by order of such justice or justices, or the court of general sessions of the peace, unless such person or persons so complained of shall give reasonable caution or assurance to the satisfaction of the justice or court that they will reform.

Proviso.

Provided, this act shall not be construed to extend to hinder any single woman of good repute from the exercise of any lawful trade or employment for a livelihood, whereto she shall have the allowance and approbation of the selectmen or overseers of the poor, or the major part of them, and any two justices committing any person or persons as aforesaid are hereby empowered as they shall find cause to discharge them again.

At a great and general court held at Boston on the eighth day of July 1741, Whereas there are many children in this province who live without the bounds of any town, who, by reason of the great poverty of their parents, are likely to be brought up in idleness, ignorance and irreligion, and it often happens that sundry persons, living without the bounds of any town, take no orderly course for a living, to the dishonour of God, the hurt of the publick welfare, and their own ruin, for remedy whereof,

SECT. 4. Be it therefore enacted by his excellency the governor, council and representatives, in general court as-

Children of the poor, living in no town, to be bound apprentices by overseers appointed by the sessions.

sembled, and by the authority of the same, that the justices of the general sessions of the peace in the several counties within this province be and are hereby fully empowered, from time to time as they shall find occasion, to appoint three or more sufficient discreet persons, freeholders in their respective counties, to be overseers of the poor, who live within the same, and without the bounds of any township, which persons, appointed overseers as aforesaid, shall be and are hereby fully authorized and empowered, from time to time, by and with the assent of two justices of the peace in the same county, to set to work or bind out apprentice, as they shall think convenient, all such children, living without the bounds of any township as aforesaid, whose parents shall, by the said overseers, or the major part of them, be thought unable to maintain them, male children till they come to the age of twenty-one years, and females till they come to the age of eighteen years or time of marriage, which shall be as good and effectual in law to all intents and purposes, as if any such child were of full age, and by indenture or covenant had bound him or herself, or that their parents were consenting thereto, provision by indenture to be made for instructing children so bound out, viz. males to read, write and cipher, and females to read, as they respectively may be capable; and such overseers shall from time to time inquire into the usage of children so bound out, by themselves or predecessors, and endeavour to defend them from all wrongs and injuries.

Overseers to set to work the poor living out of any town.

Sect. 5. And be it further enacted by the authority aforesaid, that the said overseers or the major part of them be and are hereby fully empowered, by and with the assent of two justices of the peace, to set to work all such persons, living without the bounds of any township as aforesaid, whether married or unmarried, able of body, having no means to maintain them, that live idly, and use or exercise no ordinary and daily lawful trade or business to get their living.

At a great and general court held at Boston on the eighteenth day of November, 1742, Whereas it has sometimes so happened, and may hereafter happen, that persons that are poor and unable to support themselves have and may greatly suffer by reason of the neglect of the selectmen and overseers of the poor of the town, which by law is chargeable with their support, by reason of doubts and disputes touching what town or persons are by law liable to be at charge for their support, or on supposition or pretence that the condition and circumstances of such poor persons are not so necessitous as to require relief from the town, or to render them a proper town charge, for remedy whereof for the future,

Sect. 6. Be it enacted by the governor, council and house of representatives, that every such doubt, controversy or dis-

pute as aforementioned shall be determined by the justices of the court of general sessions of the peace in the county to which such poor person doth belong, and the said justices are hereby fully authorized and empowered fully to determine the same, upon application to them made for that purpose.

The justices to determine who are the poor of the town.

Sect. 7. And be it further enacted, that in case the selectmen or overseers of the poor in any town, where there are such chosen and specially appointed for that purpose, shall refuse or neglect to take the care of, and afford the necessary relief to any poor and indigent person or persons that shall have been deemed and adjudged by the justices in sessions to stand in need of such relief, and to be the proper charge of the town to which such selectmen or overseers do belong, every such delinquent selectman or overseer shall on each conviction, before the justices of the court aforesaid, of such refusal or neglect, be by them amerced in a sum not exceeding forty shillings, at the discretion of the court, regard being had to the circumstances extenuating or aggravating the offence, such sum to be levied by distress and sale of such offender's goods, and to be applied for the support of the poor of the town where such delinquent selectmen or overseers dwell.

The overseers of the poor shall conform on penalty of forty shillings.

Sect. 8. And be it further enacted, that when any town shall refuse or neglect to defray the charges heretofore arisen, or that shall arise and accrue for the support of such indigent person or persons as ought to be supported at such town's proper charge, in such case the said justices are hereby empowered to assess the inhabitants of such town therefor, and to cause the same to be added to such town's proportion of the county tax, and therewith to be collected and paid into the county treasury, and to be disposed of by order of said justice for defraying the charges incurred for the support of such indigent person or persons as aforementioned.

The justices may assess the town on their neglect.

Sect. 9. And be it further enacted, that whosoever hath been or hereafter shall be at charge for the relief of such necessitous and indigent person or persons, who ought to be relieved and supported by the town or towns to which they respectively belong, during the time or part of the time that the selectmen or overseers of the poor have or shall neglect their duty in that behalf, the person or persons that have been or shall be at charge for their relief shall be refunded by such town or towns, by order of the justices as aforesaid, and the same shall be assessed and collected in manner as before mentioned.

Such as have been at charge shall be refunded by the town.

At a great and general court held at Boston on the thirtieth day of March, 1756, Whereas some idle, dissolute and vagrant persons, having some estate and accordingly rateable, take no care of their families, nor improve their

estates to the best advantage, which persons are not under the care and inspection of the overseers of the poor, or the selectmen of the town where such idle persons dwell,

Overseers of the poor to take under their care idle, dissolute persons, who have estates.

SECT. 10. Be it therefore enacted by the governor, council and house of representatives, that where any idle, dissolute, or vagrant persons, having a rateable estate, do neglect to take due care of themselves and their families, or to improve their estates, that in all such cases the overseers of the poor, or the selectmen of the town, shall be and hereby they are empowered to take the like care and inspection of such person or persons who neglect the due care and improvement of their estates, and who mispend their time and money, and who live idle, vagrant, and dissolute lives, as if they were poor, indigent and impotent persons, and accordingly with assent of two justices of the peace of the same county, quorum unus, put out into orderly families their children, if any they have, and improve their estates to the best advantage, and apply the produce and income thereof towards the support of them and their families.

Proviso.

Provided, that any of the said idle persons thinking themselves aggrieved may make their application to and have remedy from the justices in the general sessions of the peace in the same county, if they see cause, who are hereby empowered to relieve such aggrieved person from the determination of the selectmen.

And whereas it is apprehended that many adult persons both male and female, who by virtue of the laws of this government are liable and lawfully may be sent and committed to the house of correction for the county or workhouse for the town in which such persons may respectively reside or be found, may be employed and kept to work with less inconvenience to the town or district from whence by law they may be sent, and with more advantage to them who by law are to take the effects and receive the benefit of their labours, by their being employed and kept to work by a master who should have power to direct, govern and employ them in and about such labour and business as they can best perform,

Persons liable to the house of correction may be bound out to service.

SECT. 11. Be it enacted, that for the future it shall and may be lawful for the overseers of the poor of every town and district within this province, where any are specially chosen to that office, and for the selectmen of every town and district where there are no persons specially chosen to the office of overseers of the poor, if they see meet, and such overseers and selectmen respectively are hereby authorized and empowered by indenture or by any other form of covenant, agreement or contract valid and effectual in law, to put, place, and bind out to service to such person or persons as they shall judge suitable, for a term not exceeding one year at the longest under one and the same contract,

any adult person whether male or female, residing and found in their respective towns or districts, whom they shall judge liable by virtue of any law or laws of this government to be sent and committed to the house of correction or work house from any county, town or district in this province; and the act and doings of such overseers and selectmen respectively, whereby any such person shall and may be put and bound out to service pursuant to this act, shall be as valid and effectual in law to bind and hold the person so put to service, as if any such person by his or her own act and consent, being of the age of twenty-one years, had bound or put out him or herself a servant for the like term by indenture, or by any other legal form or manner of covenant or contract.

Proviso for applying to the court of general sessions of the peace.

Provided always, that it shall be in the power of the court of general sessions of the peace for the county wherein any such person shall be put out to service as aforesaid by virtue of this act, upon application made to said court by any such person so put out to service, or any on his or her behalf, if they judge proper, to discharge and make void any act or doing of said overseers or selectmen, whereby any person shall be put to service as aforesaid, and by their order wholly to annul the same, and set such person so bound out at liberty, and free from his or her master, and also to allow costs to the person who shall be set at liberty by said court against the town or district by whose overseers or selectmen such person so set at liberty shall have been bound out, and to award execution accordingly.

Upon their order, contracts may be dissolved.

And in all cases wherein the said court of general sessions of the peace shall by their order discharge and set at liberty any person or persons bound to service by any overseers or selectmen as aforesaid, all indentures, covenants, contracts and agreements, whereby and under which such person shall have been bound or put out as aforesaid, shall, from and after the time of such order's passing in sessions, be taken, held and adjudged absolutely void and of no effect, so far as such indentures, covenants, contracts or agreements shall respect any time to come after the time of such order's passing.

Use of the earnings of the persons bound out.

SECT. 12. And be it further enacted, that the proceeds of the labour and service of every person, who by virtue of this act shall be bound out to service, over and above the necessary costs in and about the same, shall be taken by the overseers or selectmen respectively, who shall bind out such person, to be improved and laid out for the support of the family or other poor and indigent kindred of the person bound out, with the maintenance of whom the person bound out shall by law be chargeable, if any such family or kindred such person shall have; but if the person bound out shall have no family or kindred with

whose support he or she shall by law be chargeable, the proceeds of the labour of every such person not having such family or kindred as aforesaid, shall be retained and kept by said overseers or selectmen respectively, to be paid by them to such person bound out as aforesaid, or improved and laid out for his or her use, support and benefit, by said overseers or selectmen, in such manner as to them shall appear most for the benefit and advantage of the person bound out as aforesaid, the said overseers or selectmen respectively to determine always whether to pay said proceeds in money directly to said person bound out as aforesaid, or themselves to dispose and lay out the same in some other manner to such person's use; and said overseers and selectmen are hereby required and obliged annually, at the town or district meeting in March for the choice of town officers, to exhibit to their respective towns or districts a full and true account of their disposition of the earnings and proceeds of the labour of all persons which shall have been bound out by them, not having such family or kindred as aforesaid, during the whole last preceding year, for such town's or district's examination and allowance.

And for the proceeds of the labour and service of such person, having a family or kindred with whom he or she shall be chargeable as aforesaid, such overseers or selectmen shall be accountable to the town or district to which such family or kindred, such person shall be chargeable with, shall belong and are inhabitants; and said overseers and selectmen respectively shall pay all the earnings and proceeds of the labour of the person bound out as aforesaid, who shall have such family and kindred as aforesaid, to the town or district to which such family or kindred shall belong, or their order, always excepting a reasonable allowance out of said proceeds to said overseers or selectmen, for their care, trouble and cost in binding out such person, and taking and recovering the proceeds aforesaid, which allowance said overseers and selectmen are hereby empowered to retain in their hands, and in their account said overseers and selectmen shall be allowed all such reasonable charge and cost incurred, and also a reasonable reward for their own care and trouble in and about the binding out of any such person, and taking and recovering the proceeds of his or her labour of the master to whom he or she shall be respectively bound and put out.

At a great and general court held at Boston on the twenty-ninth day of December, 1758, Whereas it sometimes happens that considerable charges arise to some towns in this province by means of their being obliged to take care of lewd women at their lying in with bastard children, and for nursing and taking care of such bastard children,

Sect. 13. Be it therefore enacted by the governor, council and house of representatives, that it shall and may be

lawful for the selectmen or overseers of the poor of any town within this province, with the assent of two justices of the peace, to bind out to service, for a term not exceeding five years, any unmarried woman who shall hereafter be delivered of a bastard child, and who during her lying in shall have been supported with her child at the charge of such town, or whose bastard child shall become a town charge before it arrive at the age of five years, and who shall be unable or shall refuse to reimburse or procure the reimbursement of such charge or expense.

Selectmen, &c. to bind lewd women to service.

And whereas there frequently happens in the several counties through this province many failures, both on the part of masters and mistresses, and on the part of indented servants, in the performance of their respective covenants or duties as expressed in their indentures or deeds of covenant whereby said servants are bound, and many injuries may be committed by masters or mistresses to bound servants, as well as by such servants to their respective masters and mistresses, which require a summary and speedy method of redress,

General sessions empowered to take cognizance on the complaints of the overseers of the poor or selectmen, relating to the deficiency of masters and mistresses towards their servants.

SECT. 14. Be it further enacted, that it shall and may be lawful for the courts of general sessions of the peace for the respective counties, upon complaint or representation made by the overseers of the poor or selectmen of any town in such county, or by the overseers appointed for the county where any indented, bought or any way legally bound servant or apprentice shall not be within any town or district, that any such servant or apprentice have been abused or evil treated by their masters or mistresses, or that the education of such children in reading or writing and ciphering, according to the tenor of their indentures, has been unreasonably neglected, to take cognizance of such representation or complaint; and if upon inquiry there shall appear to have been just cause therefor, such master or mistress shall forfeit a sum not exceeding five pounds, for the use of the poor of the town or district where such master or mistress shall then be an inhabitant, to be levied by distress and sale of his or her goods by warrant, to be issued by order of the court aforesaid, and the said court may order such child or children to be liberated or discharged from their masters or mistresses, and any male so discharged being under the age of twenty-one years, and any female under the age of eighteen years, may by order of such court be bound to other persons until they arrive to the age of twenty-one, or eighteen years respectively; and if such representation shall not be sufficiently supported or proved, the same shall be dismissed, and no fee shall be allowed or taken by said court for the entry of such representation or complaint, or any process thereon.

Penalty.

Sessions' power of binding servants after they have been liberated, &c.

In case of the elopement, &c. of servants, on complaint of their masters or mistresses, general sessions empowered to order satisfaction.

SECT. 15. And be it further enacted, that if any apprentice or servant shall elope or desert the service to which he or she is or shall be bound as aforesaid, and damage accrue thereby to the master or mistress of such servants, it shall and may be lawful for the justices of the court of sessions, upon application made to them, to order satisfaction to be made by such servant or apprentice to his or her master or mistress, either by service or otherwise, as to them shall seem meet; provided, that if any apprentice or servant shall during the present war inlist and actually go into his majesty's service, he shall not for such inlistment be deemed a deserter from the service of his master or mistress, nor be held to make satisfaction as aforesaid.

CHAPTER CCX.

AN ACT TO ENABLE PROPRIETORS IN COMMON AND UNDIVIDED LANDS TO CHOOSE TREASURERS FOR THEIR RESPECTIVE PROPRIETIES AS OCCASION MAY REQUIRE.

Proprietors of common lands empowered to choose treasurers.

BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that it shall and may be lawful for the proprietors of any common and undivided lands, or the major part in interest of them that are present at any of their lawful meetings, whenever occasion shall require, to choose some suitable person for their treasurer, who shall be sworn before a justice of the peace to the faithful discharge of his trust, and such treasurer is hereby empowered to demand, sue for, recover and receive all such sums of money, debts and dues, as shall at any time belong to the said proprietors, or be any ways due or coming to them, and make payment thereof again to such persons, and for such uses as he shall be lawfully ordered and directed from the proprietors, and of all this render his reasonable account on demand, and such treasurer shall continue in his office till the proprietors shall see cause to choose another.

Treasurer's power.

CHAPTER CCXI.

AN ACT TO ENABLE PROPRIETORS OF GENERAL AND COMMON FIELDS TO RAISE TAXES, &c.

Proprietors of common fields empowered to raise taxes.

BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that in every town in this province where several allotments of lands are inclosed in one general or common field or inclosure, and as such improved, or where all the proprietors of lands shall hereafter see cause to inclose, fence and improve the same in such manner, that in such case the proprietors of such general fields respectively shall be and are hereby fully authorized and empowered, in a proprietor's meeting for that purpose regularly convened, by a major vote of the proprietors then present, the vote to be collected according to the interest of the proprietors, to agree upon and pass one or more votes for the raising and collecting such sum or sums of money from time to time as they shall judge necessary for the carrying on or managing any publick affairs relating to such proprietors, and that they be alike empowered to choose three or five assessors for the assessing and apportioning such sum or sums, so agreed on and voted, upon the proprietors of such lands, according to their several interests therein, and to appoint a collector or collectors to gather in and collect the same, which collector or collectors shall be and are hereby fully empowered to levy and collect the sum or sums so set and apportioned for such proprietors to pay, in the same manner as constables of towns within this province are empowered to levy and collect the publick rates or taxes, and to pay in the same to the proprietors or their clerk, who is hereby empowered to grant warrants for the levying and collecting such assessment at such time as shall be by them appointed for the payment thereof, and such clerk shall be accountable to the proprietors therefor. The person or persons so assessing the said proprietors, and the collector or collectors that shall be so appointed for the gathering and collecting the sum or sums so granted and agreed upon by the said proprietors to be assessed and collected as aforesaid, shall be under oath for the true and faithful performance of their services respectively, which oath shall be administered to them as the law provides for swearing town officers.

And to choose assessors and collectors.

Proprietors or their clerk to grant warrants for such taxes.

Assessors and collectors to be under oath.

Provided nevertheless, that any such proprietor, who apprehends himself aggrieved or overrated in the making or apportioning such assessment, shall have liberty to apply to

Aggrieved proprietors to have

liberty of appealing.

the justices of the general sessions of the peace in the respective counties where such lands lie for relief, and in such case the said justices are hereby fully empowered to grant relief accordingly.

CHAPTER CCXII.

AN ACT TO ALTER SEVERAL LAWS THAT REQUIRE APPELLANTS TO FILE AND PRODUCE THE REASONS OF THEIR APPEAL.

WHEREAS it is found by experience that the appellants' filing reasons of appeal in the courts of the common law is a mere matter of form, and gives no light in the causes, but many times occasions vain disputes upon their forms, to the needless charge of the appellants, and sometimes to the utter overthrow of their causes,

No reasons of appeal to be given in any cause.

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that henceforth when any party shall be aggrieved at the sentence or judgment of any justice, or court of general sessions of the peace, or inferiour court of common pleas, and appeal to any higher judicatory, the appellant shall not be required to file or produce any writing purporting the reasons of his appeal, but the cause may be entered and tried upon the appeal without any reasons filed or produced, as heretofore hath been accustomed; any law, usage or custom to the contrary hereof in any wise notwithstanding.

CHAPTER CCXIII.

AN ACT TO LIMIT AND DIRECT IN SUING OUT EXECUTIONS UPON JUDGMENTS OF COURTS.

Method for regulating executions.

BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that when judgment shall be given in any court of record, the party obtaining it may sue out execution thereon at any time within a twelvemonth, and after-

wards renew it as often as occasion shall require, and where any execution shall be returned without any satisfaction made, or satisfied only in part, the clerk of the said court, within a twelvemonth after the return thereof into the office, may ex officio renew or make out an alias or pluries execution for the whole or the remainder, as the case may be, till the judgment be fully satisfied; but if the party shall neglect to sue out his execution, alias or pluries, within the times afore limited, he shall sue out a writ of scire facias, and cause the adverse party to be served therewith, or an attested copy thereof to be left at his dwelling or place of usual and last abode seven days inclusive before the court's sitting, requiring him to shew cause, if any he have, why execution ought not to be done, and upon his non-appearance or not shewing sufficient cause, the court shall award execution for what remaineth, with additional cost.

CHAPTER CCXIV.

AN ACT IN ADDITION TO THE SEVERAL ACTS OR LAWS OF THIS PROVINCE FOR THE SETTLEMENT AND SUPPORT OF MINISTERS.

WHEREAS the professed members of the church of England have complained, that they are unreasonably taxed for the support of divine worship in the manner established by the laws of this province, while they and their families constantly attend the worship of God according to the usage and order of the church of England, either within their own or some neighbouring town, parish or precinct,

Be it enacted by the governor, council and house of representatives, that the members of the church of England and their estates shall be taxed to the support of the publick worship of God with the other estates and inhabitants within the bounds of any town, parish or precinct, according to the laws of this province; and the treasurer of such town, parish or precinct, as he receiveth any such tax, shall deliver the taxes collected of every professed member of the church of England unto the minister of the said church, with whom he usually and frequently attends the publick worship of God on the Lord's days, which minister shall have power to receive, and if need be to recover the same in the law, to support him in the place whereunto he is duly designed and sent.

Tax of persons attending at the church of England to be paid their own minister.

Deficiency provided for.

And if by that means any deficiency happeneth in the salary of any minister settled by the laws of this province, such town, parish or precinct, within two months after such deficiency appeareth, shall make good the same.

Members of the church of England excused from charges towards the settlement of ministers, &c.

Provided nevertheless, that all such professed members of the church of England shall be entirely excused from paying any taxes towards the settlement of any minister, or building any meeting house, pursuant and according to the direction and orders of the laws of this province, and utterly debarred from voting any ways concerning such ministers or meeting houses.

Proviso.

Provided also, that no person shall be exempted or his tax paid over to any minister of the church of England, unless such minister and his churchwardens shall first certify to the treasurer of such town or parish where he lives, that such person is a member of the church of England, and usually and frequently attends the publick worship of God with them on the Lord's days as aforesaid.

CHAPTER CCXV.

AN ACT FOR PREVENTING UNNECESSARY EXPENSE IN THE ATTENDANCE OF PETIT JURORS ON THE SEVERAL COURTS OF JUSTICE WITHIN THIS PROVINCE.

WHEREAS petit jurors are oftentimes detained at the trial and hearing of causes which are not committed to them by reason of the agreement of parties, abatement of the writ, or discontinuance, whereby the plaintiff becomes nonsuit, and frequently, especially in the inferiour court of common pleas, judgment is entered up against the defendant by default, whereby great part of the jury's time is taken up, without their being allowed any benefit by law, notwithstanding their being obliged to give their constant attendance during the time of the court's sitting, until all the actions depending there are finished, wherefore,

The time of attendance of petit jurors stated.

SECT. 1. Be it enacted by the governor, council, and house of representatives, that petit jurors in the court of general sessions of the peace and inferiour court of common pleas to be held within and for the county of Suffolk shall not be obliged to give their attendance until the second Tuesday of said court's sitting, and at the said courts that are to be held within all other counties within this province on the second day of the said court's sitting, to the end that the said courts

may proceed upon and determine all pleas in bar and abatement of writs, and all other matters and things that relate to such actions as are not committed to the jury, so that their time and attendance be not unnecessarily taken up and delayed; and the clerks of the respective courts aforesaid are hereby ordered and directed, in making out writs of venire facias for the choice of petit jurors, to give directions accordingly.

No action to be entered after the first day of the court's sitting, &c.

SECT. 2. And be it further enacted, that no action be entered in any of the courts aforesaid after the first day of their sitting; and all pleas in bar of the action or abatement of the writ be either entered thereon or filed with the clerk of the said court before the jury be empanneled; and if the defendant in any action suffer default, and comes into court and moves for a re-entry of his action, after the jury be empanneled, on paying the plaintiff or his attorney such legal cost as shall then have arose, and half fees to the petit jury, to whom the same shall be ordered by said court, he shall be admitted to a re-entry of his action, and to all such privileges as by law he was intitled to on his first entry.

CHAPTER CCXVI.

AN ACT TO PREVENT UNNECESSARY LAWSUITS.

WHEREAS it frequently happens in controversies upon book debts or single contracts, that when the action comes upon trial, the defendant pleads and urges payment, and as an evidence produces his account, and whereas the common practice is to give judgment without admitting any account in favour of the defendant, whereby he is necessitated to bring forward a suit himself, which occasions a further cost, and sometimes exposeth him to the loss of his debt by reason of the original plaintiff's poverty and absconding,

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, in general court assembled, that when and so often as any person is or shall be served with an original process in any action or plea, either of debt or of the case, for any sum of money due upon single contract between the parties, for any goods sold, or service done, due by account, whether such account be open or a balance thereof be made and signed by the parties, to appear before any justice of the peace or inferiour court of common pleas,

before whom such case is cognizable, he shall be allowed by the court either to plead specially, or upon the general issue give his account in evidence by way of balance to the plaintiff's demand, and be admitted to all such method and course of proving his account, as any plaintiff upon his suit might; and the courts of justice before whom such trial shall be are hereby directed and empowered to compare and balance the accounts of plaintiff and defendant, and to give judgment for so much only as shall appear upon such balance due to the plaintiff, and if nothing appear due to the plaintiff on such balance, to give judgment for costs to the defendant.

And to the intent the plaintiff may have sufficient opportunity to examine and make all just objections to the defendant's account,

And shall therefore file his account beforehand.

SECT. 2. Be it further enacted, that no defendant shall be admitted to produce or give his account in evidence upon any suit or trial as above, in a cause triable before a justice of the peace, unless he shall have left a copy of such account four days at least before the day of trial with the justice before whom the same is to be tried, and if the cause be before the inferiour court of common pleas, then a copy of his account as above shall be left with the clerk of the court at least seven days before the day of the court's sitting, and the justice of the peace and clerk of the court respectively are hereby directed and required at the desire of the plaintiff or his attorney to grant a copy of such account.

CHAPTER CCXVII.

AN ACT TO PREVENT THE MULTIPLICITY OF LAWSUITS.

WHEREAS of late it hath been the practice of some of the sheriffs, under-sheriffs, or their deputies within this province, to receive from some of the justices of the peace and the clerks of the court within the respective counties blank writs, and then fill them up and serve them, and sometimes appear by virtue of a power of attorney to pursue the same, which practice has a tendency very much to increase the number of lawsuits and to a partial administration of justice, for remedy whereof,

Sheriffs not to fill up writs.

SECT. 1. Be it enacted by the governor, council and house of representatives, that no sheriff, under-sheriff or deputy-sheriff within this province, from and after the publication of this act, shall presume to draw or fill up any writ for any

matter or thing whatsoever, triable before any of his majesty's justices of the peace or courts of record within this province, or be any ways of advice or assistance therein, unless in cases where he or they are concerned as plaintiff, and in case it appears to the justice or court to whom such writ is returned, that any writ was so drawn or filled up as aforesaid, such justice or court shall dismiss the same and allow costs for the defendant.

Nor appear by power of attorney, &c.

SECT. 2. And be it further enacted, that no appearance of any sheriff, his under-sheriff or deputy before any justice of the peace or court of record, by virtue of a power of attorney, shall be allowed good to any intent or purpose whatsoever, in the county where he is an officer, except where the party giving the power lives out of the province, and in this case his appearance shall not be allowed if he filled the writ.

CHAPTER CCXVIII.

AN ACT TO PREVENT GAMING FOR MONEY OR OTHER GAIN.

WHEREAS games and exercises, although lawful, should not be otherwise used than as innocent and moderate recreations, and not as trades or callings to gain a living, or make unlawful advantage thereby,

All security for money won at gaming or betting upon games shall be void.

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that from and after the twenty-fifth day of March, which will be in the year of our Lord one thousand seven hundred and forty-three, all notes, bills, bonds, judgments, mortgages or other securities or conveyances whatsoever, given, granted, drawn or entered into, or executed by any person or persons whatsoever, where the whole or any part of the consideration of such conveyances or securities shall be for any money or other valuable thing whatsoever, won by gaming or playing at cards, dice, tables, tennis, bowls or other game or games whatsoever, or by betting on the side or hands of such as do game at any of the games aforesaid, or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting as aforesaid, or lent or advanced at the time and place of such play, to any person or persons so gaming or betting as aforesaid, or that shall, during such play, so play or bet, shall be utterly void, frustrate and of none effect to all intents and purposes whatsoever; and that where such

mortgages, securities or other conveyances shall be of lands, tenements or hereditaments, or shall be such as incumber or affect the same, such mortgages, securities or other conveyances shall enure and be to and for the sole use and benefit of, and shall devolve upon such person or persons as should or might have or be intitled to such lands, tenements or hereditaments in case the said grantor or grantors thereof, or the person or persons so incumbering the same, had been naturally dead, and as if such mortgages, securities or other conveyances had been made to such person or persons so to be intitled after the decease of the person or persons so incumbering the same, and that all grants or conveyances to be made for the preventing of such lands, tenements or hereditaments from coming to or devolving upon such person or persons hereby intended to enjoy the same as aforesaid shall be deemed fraudulent and void and of none effect to all intents and purposes whatsoever.

To whom the estate shall then come.

SECT. 2. And be it further enacted, that from and after the said twenty-fifth day of March, any person or persons whatsoever, who shall at any time or sitting by playing at cards, dice, tables or other game or games whatsoever, or by betting on the sides or hands of such as do play at any game or games as aforesaid, lose to any one or more person or persons so playing or betting, any sum or sums of money, or any other valuable thing whatsoever, and shall pay or deliver the same or any part thereof, the person or persons so losing and paying or delivering the same shall be at liberty, within three months then next after, to sue for and recover the money or goods so lost and paid or delivered, or any part thereof from the respective winner or winners thereof, with costs of suit, by action of debt founded on this act, to be prosecuted in any of his majesty's courts of record, in which actions or suits no essoign, protection, wager of law, or more than one imparlance shall be allowed, in which actions it shall be sufficient for the plaintiff to allege that the defendant or defendants are indebted to the plaintiff or received to the plaintiff's use the monies so lost and paid, or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action accrued to him according to the form of this act, without setting forth the special matter; and in case the person or persons, who shall lose such money or other thing as aforesaid, shall not within the time aforesaid really and bona fide, and without coven or collusion sue, and with effect prosecute for the money or other thing so by him or them lost and paid, or delivered as aforesaid, it shall and may be lawful to and for any person or persons by any such action or suit as aforesaid to sue for and recover the same and treble the value thereof with costs of suit against such winner or winners as aforesaid, the one moiety thereof to the use of the person or persons

The loser after payment may recover it back.

In default thereof any other person may sue and recover treble the value of the winner.

that will sue for the same, and the other moiety to the use of the poor of the town where the offence shall be committed.

And for the better discovery of the monies or other thing so won and to be sued for and recovered as aforesaid,

The winner shall discover upon oath the sum or thing so won.

SECT. 8. It is hereby further enacted, that all and every the person or persons, who by virtue of this present act shall and may be liable to be sued for the same, shall be obliged and compellable to answer upon oath such bill or bills as shall be preferred against him or them in any of the courts of record within this province, for discovering the sum and sums of money or other thing so won at play as aforesaid.

And such repayment shall excuse the winner from any other penalty.

Provided always, and be it nevertheless enacted, that upon the discovery and repayment of the money or other thing to be so discovered and repaid as aforesaid, the person or persons who shall so discover and repay the same as aforesaid, shall be acquitted, indemnified and discharged from any other or further punishment, forfeiture or penalty, which he or they may have incurred by the playing for or winning such money or other thing so discovered and repaid as aforesaid, any thing in this present act contained to the contrary thereof in any wise notwithstanding.

CHAPTER CCXIX.

AN ACT IN FURTHER ADDITION TO AND EXPLANATION OF AN ACT, INTITLED AN ACT FOR REGULATING TOWNSHIPS, CHOICE OF TOWN OFFICERS, &C.

WHEREAS in and by an act made in the fourth year of the reign of king William and queen Mary, intitled an act for regulating of townships, choice of town officers and setting forth their power, the freeholders and inhabitants of each town, who are rateable at twenty pounds estate to one single rate besides the poll, are empowered to assemble and to give their votes in choice of town officers in the month of March annually, but no rule of valuation is therein prescribed, whereby such estate, qualifying to vote as aforesaid, shall be estimated, nor is it declared whether the like estate shall qualify a voter in other town affairs, and there being no law of this province expressly setting forth and ascertaining the qualification of voters in precincts and parishes, by reason of which many doubts and controversies have arisen, for preventing whereof for the future,

All voters to be inhabitants present of a certain rateable estate, &c.

SECT. 1. Be it enacted by the governor, council and house of representatives, that henceforward no person shall be deemed duly qualified, or be admitted to vote in the choice of officers, or in the other affairs to be transacted at any meeting of the town, precinct or parish where he dwells, but such only who are personally present at such meeting, and have a rateable estate in such town or district, besides the poll, amounting to the value of twenty pounds, by the following method of estimation, viz. real estate to be set at so much only as the rents or income thereof for the space of six years would amount to, were it let at a reasonable rate, and personal estate and faculty to be estimated according to the rule of valuation prescribed in the act from time to time, made for apportioning and assessing publick taxes.

Determinable by the moderator by the last list.

SECT. 2. And be it further enacted, that when any dispute shall arise respecting the qualifications of any person offering his vote in any such publick meeting, the same shall be determined by the moderator of such meeting, according to the list and valuation of estates and faculties of persons in such town or district last made by assessors under oath, and if it thereby appear that such person is not qualified as by this act is provided, his vote shall not be received.

The rate of lands in lease whom to qualify.

Provided, that the value of lands leased shall not be reckoned to qualify the ter-tenant, but to qualify the lessor if he be an inhabitant in such town, precinct or parish.

Such dispute may be determined by the selectmen in case.

Provided also, that when such dispute shall happen to arise in any town, precinct or parish meeting, before a moderator shall be chosen, in such case the major part of the selectmen then present, or of the precinct or parish committee, shall respectively determine the same in manner as aforesaid; and the assessors of each town and district are hereby required to lodge with the clerk of their respective towns and districts an attested copy of such their list and valuation from year to year, which he shall produce for the purpose aforesaid as there shall be occasion, and every assessor, belonging to such town or precinct where the inhabitants are not usually doomed, neglecting his duty herein, shall forfeit and pay the sum of forty shillings, to be recovered before any of his majesty's justices of the peace of the same county.

Assessors shall lodge a copy of the list yearly with the clerk.

The moderator, permitting a person unqualified to vote, forfeits.

SECT. 3. And be it further enacted, that if the moderator of any such meeting shall countenance and permit any person not qualified as aforesaid, whose qualification for voting has been called in question, to give his voice in any such meeting, he shall forfeit and pay the sum of five pounds; and whosoever shall presume to put in more than one vote at a time, shall forfeit and pay the sum of five pounds, one moiety of the said forfeitures to be for the use of the poor of the town where the offence shall be committed, and the other

Forfeiture for putting in more

moiety to him or them that shall inform or sue for the same in any of his majesty's courts of record. than one vote.

And whereas several towns of the province do not give in an exact account of their rateable estate, and so the assessors are obliged to doom the inhabitants according to the best of their skill and judgment, whereby the qualification of voters in such places may be more difficult to come at, wherefore,

SECT. 4. Be it enacted, that where a full invoice and valuation of the rateable estates in any town or district is not taken, and the assessors on oath do doom the inhabitants, those persons only shall be allowed to vote, who are rated two third parts so much for their estates and faculties as for one single poll in the last tax of such town or district respectively. The qualification of voters.

Provided always, that nothing in this act shall be interpreted to exclude any person from the privilege of voting in the choice of representatives, who are duly qualified therefor according to the royal charter. Saving the voters for representatives.

CHAPTER CCXX.

AN ACT IN ADDITION TO THE SEVERAL ACTS FOR REGULATING FENCES.

WHEREAS the several laws already made are ineffectual for obliging persons to make and maintain partition fences between their lands under improvement, whereby the aggrieved parties are put to great expense and charge in forcing a compliance by the rules of the law,

Be it enacted by the governor, council and house of representatives, that from and after the first day of May next, that the respective proprietors of all lands inclosed with fence shall keep up and maintain partition fences between their and the next adjoining inclosures, in equal halves according to law, so long as both parties continue to improve the same, and in case either party lay his inclosure common, the party improving shall allow for his half of said partition fence what the same shall be judged worth in the estimation of two or more of the fence viewers of such town; and if any person shall inclose such land afterwards, or by joining fences with another inclose his lands, before lying common, he shall thereupon pay to the person who owns the partition fence the value of one half of the same, in the judgment of Rules for the charge of partition fences

the fence viewers as aforesaid; and all partition fences hereafter to be made shall be in like manner done and maintained by the improving parties in equal halves; and in case either party refuse after six days notice to make up his half thereof, the aggrieved party shall forthwith apply himself to two or more of the fence viewers of such town, who hereby are empowered and enabled to make up the same according to law, and upon such person's refusal, who ought to pay for the same, with their costs and charges thereon, to prosecute and sue for it in any court of law proper to try the same; and in case any dispute shall arise about the respective owners' right to any part of such fence, and his or their obligation to maintain the same, upon application made to two or more of the fence viewers of such town where the land lies, they are hereby empowered to assign to each party his share thereof, and such settlement being recorded in the town clerk's office shall be binding upon such persons, and they obliged always thereafter to maintain their part of said fence as aforesaid; and in case any of the parties aforesaid refuse or neglect, after six days notice given, to erect, keep up and maintain the partition fences as is by this act prescribed, upon application made to two or more of the fence viewers aforesaid, they shall do or cause the same to be done at the cost of the person neglecting his duty, who, in case of refusal, shall be liable to the suit of such fence viewers for the recovery thereof in manner as aforesaid, who shall be allowed double for all their charge and expense in procuring materials and doing the workmanship thereof; saving always to every person and persons any particular agreement touching the making and maintaining partition fences between their lands.

Methods for determining disputes about the charge of partition fences.

CHAPTER CCXXI.

AN ACT FOR ERECTING OF WORKHOUSES FOR THE RECEPTION AND EMPLOYMENT OF THE IDLE AND INDIGENT.

WHEREAS the erecting of houses for the entertainment and employment of idle and slothful persons who refuse to exercise any lawful calling or business whereby to support themselves and families, and of the poor and indigent that want means to employ themselves, may be of great advantage to the publick, and more especially to the towns that shall be concerned in such an undertaking,

Any single town may erect a workhouse, appoint overseers,

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that whensoever any town within this province shall see meet to erect or provide a house for the purpose before mentioned, such town shall be and hereby is authorized and empowered so to do, as also, at their publick meetings for the choice of town officers in the month of March annually, to choose five, seven or nine overseers of said house, who shall have the inspection, ordering and government thereof, with power of appointing a master and needful assistants for the more immediate care and oversight of the persons received into or employed in said house, which overseers once in every month, and at other times as occasion shall require, shall assemble together to consider and determine of the most proper methods for the discharge of their office, and at their stated monthly meetings shall have power to make needful orders for the regulation of such house, which orders shall be binding till the next publick meeting of the inhabitants of such town, to whom such orders shall be presented for approbation, and when by them approved shall be obligatory until revoked by said town.

Overseers may make needful orders for regulating such house.

Two or more towns may erect a workhouse.

SECT. 2. And be it further enacted, that when any number of towns shall agree, at their joint charge and for their common benefit, to erect or provide a workhouse for the employment of persons residing in such towns that are indigent or idle, or to purchase land whereon to erect such house and for the accommodation of it, they shall be and hereby are vested with authority to do so; and the regulation, inspection and government of such house when erected, ordering the needful repairs of it, with power of appointing a master and other assistants, and him or them, in case of any irregular behaviour, incapacity or other just cause, to remove from their respective offices or trusts, shall be in the hands of the overseers to be from year to year specially appointed or chosen by the several towns concerned at their anniversary publick meetings in the month of March, each town to choose five, unless all the towns engaged in the undertaking shall agree upon any other number or proportions; and in case of the death of any overseer, or his removal out of the town for which he was appointed, the vacancy thereby made may be supplied by such town at any other publick meeting; and if any town or towns concerned shall neglect to choose such overseers, in such case the person or persons chosen by the other towns may proceed in all affairs of said house, any such neglect or refusal notwithstanding.

May appoint overseers to inspect the house, and order the affairs of it.

Overseers to hold quarterly meetings.

SECT. 3. And be it further enacted, that there be stated quarterly meetings of all the overseers on the first Tuesday of the months of April, July, October and January, from year to year, to be held at the workhouse, in order to inspect the management thereof, and for the ordering the affairs

of said house; and besides these stated meetings, intermediate meetings, to be held at the workhouse, may be called when need requires by the overseers of any town concerned, due notice of the time and occasion thereof being given to the rest in such way and manner as shall be agreed on by the overseers at any general stated meeting.

May choose a moderator, clerk, &c.

SECT. 4. And be it further enacted, that the overseers when duly assembled may choose a moderator to regulate the business of the meeting, who shall have a voice in matters voted or transacted by the overseers, in case only of an equi-vote, and at their first general meeting in every year shall likewise choose a clerk to enter and record all votes and orders that from time to time shall be made and passed by the overseers, who shall be sworn to the faithful discharge of his trust.

May make orders and by-laws.

SECT. 5. And be it further enacted, that the overseers for the time being, at a general quarterly meeting, whereat one half at least of the whole number of overseers shall be present, shall have power to make needful and reasonable orders and by-laws, not repugnant to the laws of this province, for the better and more decent regulating the said house, and well ordering the affairs of it, which orders shall be binding until the expiration of the year for which such overseers shall be chosen, or until they shall be by them revoked, and at such meeting may likewise agree with the master or other assistants, and order meet allowance for their care and service during the term for which such overseers shall be chosen, or such further term as the towns concerned shall agree; all other matters of less importance relating to the said house may be transacted at any other meetings duly warned, when but seven of the overseers are present, subject nevertheless to be altered or reversed at any general stated meeting.

May order a meet allowance to the master and assistants.

By whom and in what proportion the allowance to the master and charge of repairing the house shall be defrayed.

SECT. 6. And be it further enacted, that the yearly stipend or allowance to the master and assistants, over and above what is provided for by this act for their care and trouble, together with the charge of keeping the house in repair, shall be paid by the several towns concerned, in proportion as they are set or rated in the province tax at the time when such repair shall be made or such allowance stated by the overseers, or in such other proportion as all the towns concerned shall agree, and the town or towns refusing or neglecting to advance their respective proportion of such allowance or other charges before mentioned, after they shall have been stated and adjusted by the overseers, the same may be recovered of such delinquent town or towns, in any court proper to try the same, by action to be brought by the person or persons whom the overseers may appoint for that purpose.

Overseers of each town concerned empowered to commit persons to the workhouse.

SECT. 7. And be it further enacted, that any three or more of the overseers in any town already provided with such a house, and of the overseers in any town that, either by themselves, or in conjunction with other towns, shall hereafter erect a workhouse, be and they are hereby directed and empowered to commit to such house, by writing under the hands of the said overseers, to be employed and governed according to the rules and orders of the house, any person or persons, residing in such town, that hereafter in this act are declared liable to be sent thither; provided that no greater number of persons belonging to any town be received into the house, than such town's proportion of said house, to be allotted them, can accommodate, when the receiving them will exclude or incommode such as belong to other towns.

Qualification of persons liable to be sent thither.

SECT. 8. And be it further enacted, that the persons who shall be liable to be sent to, employed and governed in any workhouse, erected or to be erected by one or more towns pursuant to this or any former act, are all poor and indigent persons, that are maintained by or receive alms from the town, also all persons able of body to work and not having estate or means otherways to maintain themselves, who refuse or neglect so to do, live a dissolute or vagrant life, and exercise no ordinary or lawful business or calling whereby to gain an honest livelihood, and all such as having some rateable estate, but not enough to qualify them to vote in town affairs, do neglect the due care and improvement of it, and by consuming their time and money in publick houses, to the neglect of their proper business, or by otherways mispending what they earn to the impoverishment of themselves or families, are likely to become chargeable to the town.

Towns neglecting to provide their proportion, deprived of the privilege of sending.

SECT. 9. And it is hereby further provided and enacted, that if any town shall refuse or neglect to provide their proportion of the needful furniture for such house, or of the materials, implements and other necessaries for carrying on the work, there to be performed, according to their agreement, or as shall be ordered by the overseers, such town shall be deprived of the privilege of sending any person thither, until such time as they shall comply with such order or agreement.

Master to keep materials sent by each town apart.

To be accountable.

SECT. 10. And be it further enacted, that besides the aforesaid proportion of materials, &c. to be found by the towns concerned, each town may likewise provide such materials, implements and tools for work as the overseers for such town shall judge any person by them committed to said house can be employed about, with most profit and advantage, during his or her abode there; and the master of the house shall receive such materials and keep them separate and apart from those that shall be sent by any other town, and

shall be accountable to the overseers of each town concerned, as well for the prime stock as for all profits and earnings that shall be made by the labour of those belonging to such town under his care, and shall keep a register of the names of the persons committed to such workhouse, with the time of their being received into and discharged from it, and of their earnings by their labour, that so the same may appear to any of the overseers whensoever they shall see cause to inspect them; and all controversies between the master or keeper of such house and the overseers of any town, touching his accounts or other affairs whatsoever, may be determined by the overseers of the house at a general meeting.

To keep a register, &c.

Controversies betwixt master and overseers of any town, how to be determined.

Sect. 11. And be it further enacted, that no town shall be at charge for the support or relief of any person committed to said house, who was not sent thither by the overseers belonging to such town, nor any person orderly committed to it, shall be discharged from it, but by the overseers by whom he was committed, or by the overseers at a general meeting, or otherwise by the justices of the court of general sessions of the peace in the same county, upon application to them made for that purpose; and every person so committed, if fit and able to work, shall be held and kept strictly and diligently employed in labour during his or her abode there, and in case they be idle and shall not duly perform such task or stint as shall be reasonably assigned them, or shall be stubborn and disorderly, shall be punished according to the orders that shall be made for the ruling, governing and punishing of the persons there to be committed, not repugnant to the laws of this province.

Town to support such as they commit.

How persons committed may be discharged.

Persons committed to be kept to labour.

Idle or disorderly to be punished.

Sect. 12. And be it further enacted, that one third part of the profits or earnings of the work done by the persons detained in such house shall be to the master, for and towards his support, over and above such further annual stipend as the overseers see meet to order and allow him as before mentioned for his care and service.

The master to have one third of the earnings.

Sect. 13. And be it further enacted, that the prime stock, together with the other two thirds of the profits or incomes of the labour of the persons employed there, shall be disposed of by the overseers of the respective towns to whom it belongs, either to the master in satisfaction for his service, care and expense about the persons by them committed to him, and at such rate as the said overseers and master shall agree, or for the support of the families of the persons there detained, if any such they have, or otherwise for the use of such town as occasion shall require.

How the other two thirds of the earnings and the prime stock shall be disposed of.

Sect. 14. And be it further enacted, that any workhouse erected as aforesaid may be discontinued or applied to any other use whensoever the town or towns concerned shall find or judge their circumstances require it, and shall agree so to do.

Any workhouse may be discontinued, in case.

Provided nevertheless, that nothing herein contained shall be construed or understood to abridge the town of Boston, or the overseers of the poor thereof, any privilege or power, with relation to a workhouse, already granted them by a late law of this province, for that purpose made and provided.

CHAPTER CCXXII.

AN ACT TO EMPOWER JUSTICES OF THE PEACE TO SUMMON WITNESSES.

WHEREAS it often happens that, when disputes of a civil nature arise between parties, the matter is submitted to the arbitrament and determination of persons mutually chosen between them, or where actions are commenced, the parties enter into a rule of court, whereby much cost and long contentions in the law are prevented, but for want of proper authority to summon witnesses before the arbitrators and referees, such submissions, references and peaceable settlements of disputes are not so easy as otherwise they might be, wherefore,

SECT. 1. Be it enacted by the governor, council and house of representatives, that when any such dispute or difference arising between parties shall by them be submitted to the arbitrament and determination of persons mutually chosen between them, or where actions are commenced and the parties have entered into a rule of court, it shall and may be lawful for any one of his majesty's justices of the peace within this province in the respective counties, on application of either of the parties or of the persons arbitrating, to grant subpœnas to summon and cause to appear before the arbitrators or referees such person or persons as shall be named for evidences in the premises, as fully and in the same manner as by law he might in cases depending before himself; and every person so summoned that shall refuse or neglect to appear and make oath before a justice of the peace in the presence of the arbitrators or referees as aforesaid, having first been paid as in civil causes is allowed to witnesses, shall be subject to the same forfeiture and damage as by law he might be, were he summoned to appear before any court of record, and should refuse or neglect obedience thereto.

Justices empowered to summon witnesses in arbitrations, references, &c.

Penalty for witnesses' refusing to give evidence.

How witnesses going abroad are to be sworn.

SECT. 2. And be it further enacted, that when any witness may be going to sea, or lives more than thirty miles from the place of the sitting of the referees or arbitrators, or by reason of age, sickness or other bodily infirmities is uncapable of travelling and appearing in person, then any justice of the peace, to whom application may in such case be made, is hereby empowered and directed to proceed in taking such person's evidence according to the law made for taking affidavits out of court.

CHAPTER CCXXIII.

AN ACT TO PREVENT UNNECESSARY EXPENSE IN SUITS AT LAW.

WHEREAS divers promissory notes, bills or other obligations for payment of monies and other things therein specified, when they are executed by the same party, and made payable to one and the same person, and the possessor or obligee has put them in suit at the same time, have usually been included in one writ, and may ordinarily be so, where the promises or obligations are of the same kind, without damage or inconvenience to the plaintiff, and with much less cost and expense than what would be incurred by so many several and distinct suits, notwithstanding which some ill-disposed persons, for the recovery of what was due to them on such several notes or other obligations, have purchased as many distinct writs, and thereby multiplied their suits at the same court, with intent only to burden the defendant with great and unnecessary cost and charge, therefore to discourage and prevent such practices for the future,

When divers actions are brought on several notes or bonds from the same person, costs to be given only for one, in case.

Be it enacted by the governor, council and house of representatives, that where several actions shall hereafter be brought in any court of record within this province against the same person or persons jointly, and at the same term, on several instruments of the same kind, whether notes, bills or bonds, that might conveniently have been included in one and the same writ, in such case if it shall be suggested or appear to the court probable that such actions were severed and multiplied with intent only to vex the defendant or defendants, or to put him or them to needless cost and charge, unless the plaintiff or plaintiffs shall show

forth such reasonable cause for bringing such several and distinct suits as to the justices of such court shall be satisfactory, the plaintiff or plaintiffs recovering judgment thereon shall be allowed costs in one of such actions only.

CHAPTER CCXXIV.

AN ACT FOR THE MORE SPEEDY EXTINGUISHMENT OF FIRE, AND PRESERVING GOODS ENDANGERED BY IT.

WHEREAS the contiguity or nearness of houses in many towns in this province makes it difficult when they accidentally take fire to preserve them and prevent its spreading, by reason of the inhabitants being terrified by so grievous a calamity, and the want of proper persons appointed to direct such as may be ready to assist, and moreover, ill-minded persons take the advantage of the hurry and confusion attending such accidents, to plunder and to embezzle the goods of their distressed neighbours, wherefore,

SECT. 1. Be it enacted by the governor, council and house of representatives, that the several towns within this province may, if they see fit, at their anniversary meeting in March annually, appoint a suitable number of persons, not exceeding ten, who shall be denominated firewards, and have each for a distinguishing badge of the office a staff of five feet long, painted red, and headed with a bright brass spire six inches long. All towns empowered to choose firewards.

And the firewards aforementioned are hereby required, upon notice of the breaking forth of fire, taking with them their badges respectively, immediately to repair to the place, and vigorously exert themselves in requiring and procuring assistance to extinguish and prevent the spreading of the fire, and for the pulling down or blowing up any houses, or any other service relating thereto, as they may be directed by two or three of the chief civil or military officers of the town, to put a stop to the fire, and in removing household stuff, goods and merchandizes out of any dwelling-houses, store-houses, or other buildings actually on fire, or in danger thereof, in appointing guards to secure and take care of the same, and to suppress all tumults and disorders, and due obedience is required to be yielded to them and each of them accordingly for that service. Their duty.

Penalty for refusing to assist them in extinguishing of fire.

And all disobedience, neglect or refusal in any, shall be informed of to some of his majesty's justices of the peace within two days next after, and the offenders therein, upon conviction thereof before any two justices, quorum unus, shall forfeit and pay the sum of forty shillings each, to be levied and distributed by the discretion of the selectmen among the poor most distressed by the fire, and in case the offender or offenders are unable to satisfy the fine, then to suffer ten days imprisonment.

Penalty for persons purloining or concealing goods saved from the fire.

Sect. 2. And be it further enacted, that if any evil-minded persons shall take advantage of such calamity to rob, plunder, purloin, embezzle, convey away or conceal any goods, merchandizes or effects of the distressed inhabitants, whose houses are on fire, or endangered thereby, and put upon removing their goods, and shall not restore and give notice thereof to the owner or owners, if known, or bring them into such publick place as shall be appointed and assigned by the governor and council, within the space of two days next after proclamation made for that purpose, the person or persons so offending, and being thereof convicted, shall be deemed thieves, and suffer the utmost severities of the pains and penalties by law provided against such.

CHAPTER CCXXV.

AN ACT TO PREVENT UNNECESSARY COST BEING ALLOWED TO PARTIES AND WITNESSES IN THE SEVERAL COURTS OF JUSTICE WITHIN THIS PROVINCE.

Whereas oftentimes there are several plaintiffs or defendants in one and the same action, brought either to the superiour court or the inferiour court of common pleas within the respective counties, and in taxing the bills of cost arising on said actions, all the plaintiffs or defendants, mentioned in the writ so brought, are allowed for their attendance, although it frequently happens that only one of the plaintiffs or defendants do actually attend, and sometimes neither of them, and inasmuch as an allowance is sometimes made for witnesses not summoned, or when summoned, for much longer time than such witnesses have actually attended the court, by which means bills of cost are exorbitantly enhanced, for the prevention whereof for the future,

Sect. 1. Be it enacted by the governor, council and house of representatives, that from and after the publication

of this act, neither the justices of the superiour court, nor the justices of the inferiour court of common pleas in the respective counties within this province, shall, in taxing any bills of cost, allow for the attendance of more than one person as plaintiff or defendant, although there are more plaintiffs or defendants than one in any suit or action, and appear by themselves or by their attorney or attorneys, except where the defendants plead severally, and in case of the actual attendance of either plaintiff or defendant, they shall be allowed in the bill of cost for no longer time than they make evident to the court the number of miles they travel, and time of their attendance as aforesaid.

Justices of the several courts to allow cost but for one person as plaintiff or defendant, except.

Sect. 2. And be it further enacted, that no person, filing a complaint in the superiour court or inferiour court respectively for the affirmation of a former judgment, shall be allowed at any time more than three days' attendance in the bills of costs to be taxed by said courts.

No person filing a complaint to be allowed for more than three days' attendance.

Sect. 3. And be it further enacted, that no witness, giving his or her deposition in any case, who shall not be served with a subpœna, shall be allowed in the bill of costs any more than one day's attendance; nor shall any witness, summoned to appear, be allowed for more days than such witness shall actually attend, and make it evident to the court where the action shall be commenced, by their certifying on the subpœna the number of miles of their travel, and time that he or she has actually attended.

No witness, not served with a subpœna, to be allowed more than one day's attendance, &c.

CHAPTER CCXXVI.

AN ACT IN ADDITION TO THE ACT, INTITLED AN ACT FOR APPOINTING COMMISSIONERS OF SEWERS.

Whereas the water in some rivers or streams is raised and kept at such height by mill-dams erected across the same, that it has been found difficult to discover and impracticable to remove the obstructions that occasion the overflowing of meadows, whilst the owners of such dams have refused to empty their mill ponds, by opening the flood-gates or other sufficient passage for the water that had been raised by such dams to flow out, by means whereof commissioners of sewers have been much hindered in the execution of their trust, and the owners of such meadows have thereby in a great measure lost the benefit intended by said act,

therefore, for preventing the like inconvenience for the future,

Commissioners of sewers empowered to open flood-gates, &c.

SECT. 1. Be it enacted by the governor, council and house of representatives, that when and so often as commissioners of sewers shall judge it necessary, in order to the well executing their trust in discovering or removing the natural obstructions in rivers or streams over which any mill-dam is erected, that the water which had thereby been stopped and raised above its usual height should flow out, in such case it shall be lawful and such commissioners are hereby empowered to open or cause to be opened the flood-gates, and to cause to be made and opened other needful sluices or passages in or about such dam or dams, and such passages to keep open whilst they are using the proper means for discovering or removing such obstructions, as also for the more speedy draining of meadows in time of great floods, and in such manner as that the owner or owners of such mill-dam or dams may suffer as little inconveniences or damage thereby as may be.

Owners of mill-dams opened, to be allowed damages.

SECT. 2. And be it further enacted, that if any owner of such mill-dam shall suffer damage by the opening or keeping open such sluices or passages as aforesaid, the said commissioners shall order him reasonable satisfaction, by their estimation, for such damage, and shall assess the same on the proprietors of the overflowed lands or meadows, at whose request and for whose benefit such commissioners were appointed, and to cause the same to be collected in manner as in and by the said act is provided for collecting of other charges.

Penalty for owners of mill-dams who shall molest or hinder commissioners in the execution of their power.

SECT. 3. And be it further enacted, that the owner or owners of any dam or dams, or other person whosoever, that directly or indirectly shall molest or hinder any such commissioners, or others employed by them, in the execution of the power or trust reposed in them by this or any former act, by shutting up or stopping any passage made or opened by them or by their order for any the purposes aforesaid, shall for each offence forfeit and pay as a fine to his majesty for the use of this government the sum of twenty pounds, to be recovered by bill, plaint or information in any court proper to try the same, after the manner of conviction, and by the same rules and methods as are provided and directed to in an act, intitled an act in addition to and for rendering more effectual an act, made in the tenth year of the reign of king William the third, intitled an act for preventing of trespasses.

And whereas it has been found necessary in order to remove the natural obstructions in rivers and streams, that the course of the water there be stopped, by dams erected for that purpose, during the time that workmen are employed in removing them,

SECT. 4. Be it therefore enacted, that it shall be lawful for commissioners of sewers, when and so often as they shall find it needful, to erect or cause to be erected any dam or dams upon or across any river or stream wherein such obstructions are found, for the greater ease and despatch in removing them, provided such dam or dams be taken down as soon as conveniently may be after the work is finished, and meet recompense be made, in manner as aforesaid, for any damages that may thereby accrue to the owner or owners of the land against or over which such dam or dams shall abut or be erected, or which by occasion of such dam may happen for a time to be overflowed with water. Saving always the liberty of appeal from any orders or determinations of the said commissioners to the governor and council, as by the aforementioned act in that behalf is provided.

Commissioners empowered to erect dams, provided, &c.

Saving.

CHAPTER CCXXVII.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT DIRECTING HOW RATES AND TAXES TO BE GRANTED BY THE GENERAL ASSEMBLY, AS ALSO COUNTY, TOWN AND PRECINCT RATES SHALL BE ASSESSED AND COLLECTED, MADE AND PASSED IN THE FOURTH YEAR OF HIS PRESENT MAJESTY'S REIGN.

WHEREAS no provision is made in the act, intitled an act directing how rates and taxes granted by the general assembly, as also county, town and precinct rates shall be assessed and collected, for appointing collectors or constables, where towns neglect to choose them, whereby, unless there be some remedy, the good design of said act to secure the payment of the taxes granted by the general assembly will be frustrated,

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that where any town or towns have neglected or shall neglect to choose constables or collectors to gather the rates or taxes granted by the general court, that in such case the sheriff of the county shall be and hereby is empowered and directed to collect such rates or taxes, having received an assessment made of the proportion of the several persons rateable in such town, together with a warrant under the hands of such assessors as shall be appointed by the court of general sessions of the peace in the

Sheriffs empowered to collect rates or taxes in towns that have or shall neglect to choose constables or collectors.

county where such deficient town lies, according to the aforesaid act of the fourth year of his present majesty's reign; and the said assessors are hereby directed, where any town has for divers years past, or shall for several years together hereafter neglect to choose assessors or constables and collectors, to add together the several sums annually due, as also the several fines of twenty pounds due for each year's neglect, and their own allowance by law established, to be proportioned among the several inhabitants and others rateable in such town, according to their best judgment.

Sheriff to post up copy of assessment and warrant.

SECT. 2. And be it further enacted by the authority aforesaid, that the sheriff, upon receiving the aforesaid assessment and warrant for collecting it, shall forthwith post up in some publick place of the town assessed an attested copy of such assessment and warrant, and shall make no distress for any of the sums so assessed, till after thirty days from his posting it up; and any person or persons, paying the sum or sums respectively assessed on him or them to the sheriff before the expiration of the aforesaid thirty days, shall pay at the rate of five per cent. over and above to the sheriff for his fees, and no more; but all such as shall neglect to pay the sum or sums assessed, for the space of thirty days or longer from the aforesaid posting up the copy of the assessment, shall be proceeded against by the sheriff in way of distress as collectors by law are empowered, and may require suitable aid for that purpose, and they shall each one pay the fees for the sheriff's service and travel, as in other cases where distraint is made.

And to the intent the courts of general sessions of the peace, in the several counties where such deficient towns shall respectively belong, may from time to time seasonably appoint assessors as needful,

Treasurer to send a certificate to the clerk of the court of general sessions of the county where deficient towns belong.

SECT. 3. Be it enacted by the authority aforesaid, that the province treasurer for the time being shall, as soon as may be after he hath issued his warrants to the assessors of the several towns for assessing and collecting the rates and taxes granted by the general assembly for the space of sixty days, without any account of such town's choice of collectors or constables, whether it be a town that hath neglected to make such choice, or that hereafter shall neglect so to do, in every such case the said treasurer shall send a certificate to the clerk of the court of general sessions of the peace for the county, whereto the deficient town belongs, of such their deficiency, who shall lay it before said court of sessions at their next sitting, whereupon the said court shall forthwith proceed to appoint assessors to assess and proportion the rates and taxes granted as aforesaid, and the assessors so appointed shall, as soon as may be, take an oath to the faithful discharge of their trust before the said court, or some one or more of the justices by the court of sessions to

be appointed for that purpose; and if any person appointed an assessor as aforesaid shall refuse to serve, he shall forfeit the sum of twenty pounds to his majesty for the use of the province; and the court of sessions shall immediately proceed to appoint others.

CHAPTER CCXXVIII.

AN ACT RELATING TO VIEWS BY A JURY IN CIVIL ACTIONS.

Courts may allow jurors to have the view of messuages, lands, &c. in question and to be tried.

BE it enacted by the governor, council and house of representatives, that from and after the publication of this act, in all actions brought in any of his majesty's courts of record within this province, where it shall appear to the court in which such actions are depending, that it will be proper and necessary that the jurors who are to try the issues in any such actions, should have the view of the messuages, lands or place in question, in order to their better understanding the evidence that will be given upon the trial of such issues, in every such case the respective courts in which such actions shall be depending, may order the jury to the place in question, who then and there shall have the matters in question shewn them by two persons to be appointed by the court; and the special cost of all such views as allowed by the court shall before the trial be paid by the party who moved for the view, the adverse party not consenting thereto, and shall at the taxation of the bill of cost have the same allowed him upon his recovering judgment on such trial; and upon all views with the consent of parties ordered by the court, the costs thereof as allowed by the court shall before trial be equally paid by the said parties, and in the taxation of the bill of costs the party recovering judgment shall have the sum by him paid allowed to him, any law, usage or custom to the contrary notwithstanding.

By whom cost of view is to be paid.

CHAPTER CCXXIX.

AN ACT MORE EFFECTUALLY TO PREVENT PROFANE CURSING AND SWEARING.

Forasmuch as the horrible, impious and execrable vices of profane cursing and swearing, so highly displeasing to Almighty God and offensive to every christian, are become so frequent and notorious, that unless speedily and effectually punished, they may justly provoke the divine vengeance to increase the many calamities this people now labour under, and whereas the laws now in being for punishing those crimes have not answered the good intentions for which they were designed,

Penalty for profane cursing or swearing.

Sect. 1. Be it therefore enacted by the governor, council and house of representatives, that from and after the twentieth day of February instant, if any person or persons that have arrived at discretion, in the judgment of the justice before whom the conviction may be, shall profanely curse or swear in the hearing of any justice of the peace, or being charged therewith shall confess such offence, or be otherwise convicted thereof on the oath of any sheriff, deputy-sheriff, coroner, constable, grand juror or tithing man, where such evidence shall be satisfactory to the justice that shall take cognizance of the offence, or on the oath of any one or more witness or witnesses where the evidence shall be satisfactory as aforesaid, every person so offending shall forfeit and pay, for the use of the poor of the town where such offence is committed, a sum not exceeding eight shillings nor less than four, according to the aggravations of the offence and the quality and circumstances of the offender, in the judgment of the justice or court before whom the conviction is; and in case the same person or persons shall, after conviction, offend a second time, such offender or offenders shall forfeit and pay double, and if a third time, treble the sum forfeited on the first conviction, and the like sum on every conviction afterwards; and if on any trial and conviction, proof shall be made that more than one profane oath or curse were uttered by the same person at the same time, and in the presence or hearing of the same witness or witnesses, the person so offending, for every profane oath or curse so uttered after the first, shall forfeit and pay a sum not under one shilling, nor exceeding two shillings; and in case any person convicted of profane cursing or swearing shall not immediately pay the sum or sums so forfeited, he shall be

committed to the common gaol or house of correction, there to remain not exceeding ten days nor less than five days.

Proviso.

SECT. 2. Provided always, and it is hereby enacted, that in case any common soldier in his majesty's service, or any common sailor or seaman belonging to any ship or vessel shall be convicted of profane cursing or swearing as aforesaid, and shall not immediately pay down the penalty by him forfeited, such common soldier or seaman, instead of being committed as aforesaid, shall by the said justice of the peace be ordered to be publickly set in the stocks or cage, for the first offence not exceeding three hours, and for the second or any after offence shall be publickly whipped, not exceeding twenty nor less than ten stripes; and if any Indian, negro or mulatto slave, shall be convicted of profane swearing and cursing, and the fine is not immediately paid, such slave shall be publickly whipped, by order of such justice, not exceeding twenty stripes nor less than ten.

Sheriff &c. to apprehend and secure offenders against this act.

SECT. 3. And be it further enacted, that if any person or persons shall profanely swear or curse in the hearing of any sheriff, deputy-sheriff or constable, they and each of them are hereby authorized and required to apprehend and secure such offender or offenders being unknown to them, and to require suitable aid therein, and him or them forthwith to carry before some justice of the peace for the same county, that so such offender or offenders may be convicted and punished for the said offence; and in case any person profanely swearing or cursing in the hearing of any sheriff, deputy-sheriff, coroner, constable, grand juror or tithingman, shall be known to any or either of them, such sheriff, under-sheriff, coroner, constable, grand juror or tithingman, shall and is hereby required forthwith to give information thereof to some justice of the peace of the same county, in order that the offender or offenders may be convicted and punished for the same in manner and form as in and by this act is directed.

SECT. 4. And be it further enacted, that every justice of the peace, before whom any person or persons shall be convicted of profane cursing or swearing, shall cause the conviction to be drawn up in the form following:

Form of conviction.

Suffolk, ss. Be it remembered, that on the day of in the year of his majesty's reign, A. B. was convicted before me, one of his majesty's justices of the peace for the county of of swearing one [or more] profane oath [or oaths] or of uttering one [or more] profane curse or curses [as the case shall be] given under my hand and seal the day and year aforesaid.

Which said form and conviction shall be deemed and taken to be final to all intents and purposes, saving as herein is after expressed; and the said justice, before whom such conviction shall be, shall cause the same to be fairly wrote over

and returned to the then next court of general sessions of the peace, for the county where the offence is committed, there to be read in open court and to be filed by the clerk of the peace, and remain and be kept amongst the records of said court.

Saving.

Saving always, and it is hereby provided and enacted, that when any person shall be convicted before a justice of the peace of profane cursing or swearing, if the defendant shall confess the words alleged to have been uttered, and shall plead specially that the words spoken do not amount to or import a profane oath or curse, within the meaning and intention of this act, in such case it shall and may be lawful for such defendant to appeal from the sentence of the justice, before whom he was convicted, to the justices of the same county, in their next general sessions of the peace, who shall hear and finally determine the same, the appellant claiming his appeal at the time of declaring the said sentence, and recognizing with sureties in a reasonable sum, not exceeding five pounds, to prosecute his appeal with effect, and to perform the order of the said court thereon.

Penalty for justices neglecting their duty.

SECT. 5. And be it further enacted, that if any justice of the peace, upon due information and complaint made against any person or persons for profane cursing or swearing, shall wittingly and wilfully omit the performance of his duty in the execution of this act, he shall forfeit and pay the sum of five pounds, one moiety thereof to the informer that shall sue for the same, and the other moiety to the use of the poor of the town where he resides, to be recovered by action or information in any of his majesty's courts of record within the respective counties where such offence is committed, and no essoin, protection or wager of law shall be allowed, or more than one imparlance.

Penalty for constables, &c. omitting their duty.

SECT. 6. And be it further enacted, that if any constable, grand juror, tithingman or other officer, enjoined by this act to inform against the violators of it, shall wittingly and willingly omit the performance of his duty in the execution of this act, and be thereof duly convicted before any justice of the peace for the county where such offence is committed, he shall forfeit and pay the sum of forty shillings, to be levied and recovered by distress and sale of the offender's goods and chattels, by virtue of a warrant under the hand and seal of such justice, to be disposed of, one moiety thereof to the informer, the other moiety to the use of the poor of the town where the offence is committed; and in case such offender shall not have sufficient goods and chattels whereon to levy the said penalty, it shall and may be lawful for such justice of the peace to commit the offender to gaol for the space of six days, there to remain without bail or mainprise.

SECT. 7. And be it further enacted, that if any person, being required to give aid to any sheriff, deputy-sheriff or

constable, as by this act is provided, shall neglect or refuse the same, and be thereof convicted before any justice of the peace, by the oath of any such sheriff, deputy-sheriff or constable, or other legal witness or witnesses to the satisfaction of such justice, such person so refusing shall forfeit and pay the sum of forty shillings, the one half to the informer, and the other half to the poor of the town where the offence is committed; and every person, giving aid as before is provided in this act, shall receive the same allowance therefor, as is by law made to witnesses in civil causes. Penalty for such who shall neglect to give aid, &c.

Provided always, and it is hereby enacted, that no person shall be prosecuted or troubled for any offence against this law, unless the same be proved or prosecuted within twenty days next after the offence is committed. Proviso.

Sect. 8. And that no person may plead ignorance of this law, but that it may be generally known, be it further enacted, that immediately after the publication of it from the court house in Boston, a printed copy of this act shall be transmitted to every minister within the government, to whom it is hereby recommended to read or cause the same to be publickly read before their several congregations immediately on his receiving the same, and also on the Lord's day next succeeding the choice of town officers yearly during the continuance of this act. This act recommended to be read, &c.

Sect. 9. And be it further enacted, that the justices of the court of assize and general gaol delivery, and the justices of the peace for the several counties within this province at their general sessions, shall cause this act to be publickly read at the opening of their respective courts from time to time. This act to be read at the opening of courts.

CHAPTER CCXXX.

AN ACT TO ENABLE THE PROPRIETORS OF PRIVATE WAYS TO REPAIR THEM IN AN EQUAL MANNER.

Whereas there are many private ways in this province which are seldom used but by the purchasers or proprietors of them, or the owners of the lands to which such ways lead, and are therefore not repaired by the towns in which they respectively lie, nor have the proprietors or rightful occupants of such ways any power by the laws of this province to compel their being repaired by or among themselves, to

prevent therefore the inconveniences which do or may thence arise,

Proprietors and occupants of private ways may apply for a meeting, &c.

Be it enacted by the governor, council and house of representatives, that when and so often as any number of the proprietors and rightful occupants of any private way, where there are more than four of them, shall judge a proprietors' meeting necessary, three of them applying to a justice of the peace in the county where said way lies, such justice is hereby empowered to grant a warrant for calling the same, or otherwise one fourth part of the said proprietors may of themselves call such meeting, in either case to be done by warrant under the hand of said justice or fourth part respectively, posted up in some publick place or places in the town or towns where such way is, seven days before the time appointed for such meeting, signifying the time, place and business thereof; and the major part of the proprietors and rightful occupants so assembled shall have full power to agree on any other way of calling future meetings, to choose a clerk and a surveyor, who shall be sworn to the faithful discharge of their respective trusts as town officers are; and such surveyor shall have the same power with respect to such ways as the surveyors of highways are by law invested with, and shall be governed by the same rules as are prescribed by law for their direction, each proprietor's and occupant's proportion of labour to be determined by a major vote of those present at such meeting, and in case of the default of any proprietor or occupant in attending said work by himself or other sufficient person in his stead, to be subject to the same fines and penalties as in case of highways, and to be recovered in the same manner, and applied to the same uses.

Major part may agree for calling future meetings.

CHAPTER CCXXXI.

AN ACT FOR THE EASE OF PRISONERS FOR DEBT.

FORASMUCH as in divers counties within this province the prisons are so small, that when there are any numbers of prisoners, there are not rooms or apartments sufficient for the receiving and securing of them, without lodging felons and other criminals and prisoners for debt together in one and the same room, which is very inconvenient,

Prisons to be made with convenient apartments.

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that in the several counties within this province, the prisons that are or shall be erected within the said counties shall be made so large as that there may be sufficient and convenient apartments for the receiving and lodging of prisoners for debt, separate and distinct from felons and other criminals.

Debtors to have separate apartments.

SECT. 2. And be it further enacted, that any person imprisoned for debt, either upon mean process or execution, shall be permitted and allowed to have a chamber and lodging in any of the houses or apartments belonging to such prisons, and liberty of the yard within the same in the day time, but not to pass without the limits of the prison, upon reasonable payment to be made for chamber room, not exceeding one shilling and sixpence per week, such prisoner giving bond to the sheriff with two sufficient sureties, being freeholders, bound jointly and severally in double the sum for which he is imprisoned, with the condition underwritten in form following, viz.

Form of the bond to be given.

"That if the above bounden A. B. now prisoner in his majesty's gaol in B. within the county of S. at the suit of C. D. do and shall from henceforth continue and be a true prisoner in the custody, guard and safe keeping of J. S. keeper of the same prison, and in the custody, guard and safe keeping of his deputy, officers and servants, or some one of them, within the limits of the said prison, until he shall be lawfully discharged, without committing any manner of escape or escapes during the time of his restraint, then this obligation to be void, or else to abide in full force and virtue."

Forfeitures for the creditors.

And in case of any escape the whole penalty of such bond shall be to and for the use of the creditor, and such bond shall be transferred and assigned over to the creditor by the sheriff, with full power to enable him to put the same in suit; and the creditor shall recover the whole sum therein expressed, and the court shall make up judgment accordingly; and the sheriff delivering up such bond to the creditor so assigned as aforesaid shall not be liable to any action of escape for any prisoner enlarged upon security given in manner as aforesaid.

Proviso.

Provided always, that the sureties be approved as sufficient by the justices of that court before whom the cause upon such commitment is to be tried, or from whence execution issued, or any two of them being together, or by two justices of the county, quorum unus, as aforesaid, where the debtor is imprisoned, and no other security to be accepted.

CHAPTER CCXXXII.

AN ACT IN ADDITION TO, AND FOR EXPLANATION OF AN ACT, INTITLED AN ACT FOR LIMITATION OF ACTIONS, AND FOR AVOIDING SUITS AT LAW WHERE THE MATTER IS OF LONG STANDING.

WHEREAS in and by an act made in the thirteenth year of his present majesty's reign, intitled an act for limitation of actions, and for avoiding suits in law where the matter is of long standing, it is among other things enacted, "That all actions for arrearages of rent, or grounded on any lending or contract without specialty, should be brought within four years next after the cause of such action, in cases where the cause of action should arise after the publication of the said act, and in those cases where the cause of action had arisen before, within four years after the publication thereof, and not afterwards," and whereas the latter part of the said clause was, at the time of making the said act, generally understood to be meant and intended only of such actions grounded on lending or contract without specialty as are expressed in the act of parliament, which was passed in the twenty-first year of the reign of king James the first, intitled an act for limitation of actions and avoiding suits at law, from which act the before recited law of this province is, with respect to the actions therein mentioned, in a great measure copied, but yet the same construed in its utmost latitude may be understood to include actions of the case upon bill or note of hand, and has lately been so adjudged by some of the courts of judicature within this province, and by the like construction may be deemed to extend to all actions of account and upon the case whatsoever, not excepting such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, by which construction in the courts of judicature very many creditors have been greatly surprised and injured, who, upon the aforesaid general understanding of the said clause of the aforesaid provincial act, and through lenity to their debtors, have forborne to bring actions for the recovery of debts due to them by promissory note or otherwise howsoever upon simple contract, within the time limited in the aforesaid law of this province for bringing actions grounded upon lending or contract without specialty, and will thereby, upon the aforesaid construction of the lat-

ter part of said recited clause, be barred from bringing actions for the recovery of the same, and great mischief and inconvenience may arise in the trade of merchandize and dealings between merchant and merchant, and other traders within this province, now for remedying and preventing the same,

Further time allowed for bringing actions of account and on the case.

SECT. 1. Be it declared and enacted by the governor, council and house of representatives, that all actions of account or upon the case grounded on any lending or contract or otherwise howsoever, in which the cause of action has arisen before the publication of this act, and which have not yet been commenced or prosecuted to effect, may be brought and prosecuted at any time within four years after the publication hereof; and in cases where such actions have been commenced, and judgment hath been given, upon plea in bar or on trial, for the defendant, the plaintiff or plaintiffs in such action, their executors or administrators, may bring and prosecute a writ of review of the said action in such court where the same was tried, within three years after the making up such judgments, for the reversing the same, and recovering of their debt, any thing in the aforesaid act contained to the contrary notwithstanding, and shall have the like advantage for recovering the same, as if the said act had never been made; and that all actions of account and upon the case other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, the cause whereof shall arise after the publication of this act, shall be brought within the term of four years next after the cause of such actions, and not afterwards; and that all actions of account which concern the trade of merchandize between merchant and merchant, their factors or servants as aforesaid, may be brought and prosecuted at any time after the cause of such action, at the pleasure of such persons as may be concerned, any thing in the aforesaid act to the contrary in any wise notwithstanding.

Time limited for bringing actions of account and on the case.

Proviso.

SECT. 2. Provided always, and be it further enacted, that this act shall not be understood to bar any infant, feme covert, person imprisoned, beyond the seas, or non compos mentis, from bringing either of the actions before mentioned within the term before set and limited for bringing such actions, reckoning from the time that such impediment shall be removed.

And whereas it may happen that some debtors may be out of this province during the whole or some considerable part of the term of time by this act allowed and limited for bringing such actions as aforesaid, and the creditors in such case not have like advantage with other creditors for recovering their debts,

Proviso where debtor continues out of the province.

SECT. 3. It is therefore hereby further provided and enacted, that if any debtor shall continue out of this province more than twelve months within the aforesaid term, in such case the creditor shall be allowed such further time for bringing his action and recovering his debt as shall appear (to the satisfaction of the court in which such action shall be brought) that the debtor had continued out of the province within the four years before mentioned.

CHAPTER CCXXXIII.

AN ACT FOR THE MORE EASY PARTITION OF LANDS.

WHEREAS the partition of lands is often delayed by reason that the parties concerned therein are very numerous, and live remote from each other, and sometimes in parts beyond the seas, and are some of them unknown, to the hinderance and retarding of the improvement and settlement of lands in this province, for remedy whereof,

Superiour court, upon application, to make partition of lands.

Be it enacted by the governor, council and house of representatives, that from and after the publication of this act, any person or persons interested with any others in any lot or grant of land, making application, either by themselves or their lawful agents, attorneys or guardians, to the superiour court of judicature, the said court, whether then holden in the county where such lands lie, or in any other county within this province, is hereby authorized and empowered to cause partition to be made of such lands, with the buildings thereon, if any such there be, and the share or shares of the party or parties applying for the same to be set off and divided from the rest, such partition to be made by five freeholders under oath, or the major part of them, to be appointed by said court, and a return of such partition to be made into the clerk's office of said court, and the partition or division so made being accepted by the said court, and there recorded, and also recorded in the registry of deeds in the county where such estate lies, shall be valid and effectual to all intents and purposes.

Exception where any persons are non

Provided nevertheless, that before such partition be made, where any infants or persons under age, or non compos mentis are interested, guardians shall be appointed for all such persons according to law, if they live within this province;

and if any person or persons interested in any such estate happen, at the time when such application shall be made, to have been beyond sea or out of this province for the space of one year, and not expected to return into the same within the space of six months more, and have no sufficient attorney within the same, that then and in such cases the justices of the said court shall appoint some discreet and indifferent person or persons as agent or agents for such absent party or parties, and on his, her or their behalf to be advising in making such partition; and due notice to all concerned, that are known and within this province, shall be given before such partition be made, that so they may be present, if they see meet, at the time of making the same. compos or out of the province.

Provided also, that no partition be made where any partner shall be beyond sea, and shall not have been absent twelve months, or shall be expected to return within six months; any thing in this act to the contrary notwithstanding. Proviso.

Provided also, that if any partner should have a larger share set off than is such partner's true and real interest, or if any share set off should be more than equal in value to the proportion it was set off for, then and in every such case, upon complaint to the court which caused said partition to be made within three years of the making thereof, by any aggrieved partner or partners, who at the time of making such partition were out of the province, and not notified thereof as aforesaid in time for them to be present at the same, the said court shall cause a partition thereof to be made de novo. Case where the partition may be made de novo.

And in such new partition so much and no more shall be taken off from any share, as such share shall be adjudged more than the proportion of the whole it was designed for, estimating such lands as in their original state, or the state they were in when first divided; and in case any improvements shall have been made on the part that may by such new partition be taken off as aforesaid, the partner who made such improvements shall have reasonable satisfaction made them by the partner or partners to whose share the same shall be added, by the estimation of the freeholders employed in making such new partition, or the major part of them.

CHAPTER CCXXXIV.

AN ACT FOR THE PUNISHING SUCH OFFENDERS AS SHALL BE ANY WAYS CONCERNED IN CONTRIVING, WRITING OR SENDING ANY INCENDIARY OR MENACING LETTERS, IN ORDER TO EXTORT SUMS OF MONEY OR OTHER THINGS OF VALUE FROM ANY OF HIS MAJESTY'S GOOD SUBJECTS.

WHEREAS there has been of late divers letters without a name sent to several of his majesty's good subjects of this and some of the neighbouring governments, by abandoned villains, demanding from them large sums of money, and threatening ruin and destruction to their persons and estates, in case they should fail of a compliance with their demands,

Therefore for deterring and punishing such offenders and their accomplices,

Penalty for sending threatening letters to extort money.

SECT. 1. Be it enacted by the governor, council and house of representatives, that if any person or persons shall send any such letter or letters without a name subscribed, or signed with a fictitious or counterfeit name, requiring or demanding any sum or sums of money, or any other valuable thing, knowing the purport thereof, or that shall counsel, advise or contrive any such letter as aforesaid, or that shall indite or write the same, and be convicted thereof, such person or persons shall be punished by sitting on the gallows for the space of one hour, with a rope about his, her or their neck, and afterwards shall be set upon the pillory, and there have one of his, her or their ears cut off, and be further punished by imprisonment for the space of three years, during all which time such person or persons shall be kept to hard work, and every three months from the commitment be brought out and whipped twenty stripes on the naked back at the publick whipping post.

Penalty for not discovering.

SECT. 2. And be it further enacted, that if any person shall be knowing to the contriving any such letter as aforesaid, or to the writing, carrying or sending the same, though not concerned therein, and shall not immediately discover the same to some lawful authority, such person shall be deemed guilty of an high misdemeanour.

Act to be read in town meetings.]

SECT. 3. And be it further enacted, that this act shall be publickly read by the town clerk in each town through this province at their meeting in March annually.

CHAPTER CCXXXV.

AN ACT TO PREVENT VEXATIOUS LAWSUITS.

WHEREAS it is the practice of divers persons in this government to vex their neighbours, and put them to excessive costs, by suing them to some distant court, in some county of the province, where neither plaintiff nor defendant is an inhabitant, and such suits are frequently sustained, notwithstanding the law of this province enables the several inferiour courts of common pleas, and the superiour court of judicature to try matters only that happen and arise within the county where the court is held, by reason whereof many inconveniences have arisen, for prevention whereof,

No personal action to be tried at the inferiour court, &c. in any county where neither party is an inhabitant.

Be it enacted by the lieutenant governor, council and house of representatives, that from and after the publication of this act no personal action or suit shall be brought by any plaintiff or plaintiffs, that are inhabitants of this government, to any inferiour court of common pleas in any of the counties within this province, where neither the plaintiff nor plaintiffs by whom such suit is brought, nor the defendant nor defendants against whom such suit is brought, shall be an inhabitant within such county where such suit is brought as aforesaid, but all such actions or suits shall be barred, and the defendant or defendants so sued shall recover double costs of the suit, saving where such defendant or defendants against whom such suit is brought are not inhabitants of this province, in such case such action or suit may be brought in any of the counties within this province.

Saving.

Proviso.

Provided nevertheless, in cases of trespass vi et armis, and debts due by bond that by the face of said bond are made local, those actions may be tried where the trespass shall have been committed, or where said bonds have been given.

CHAPTER CCXXXVI.

AN ACT IN FURTHER ADDITION TO THE SEVERAL ACTS OF THIS PROVINCE, MADE FOR THE DISTRIBUTION AND SETTLEMENTS OF THE ESTATES OF INTESTATES.

WHEREAS by the laws of this province, made for the distribution and settlement of the estates of intestates, it is provided, that such real estates, as cannot without prejudice to or spoiling them be divided among all the children of any person dying intestate and leaving children, may be settled on one or so many of them as the estate will conveniently accommodate, but no provision by law has as yet been made for the like settlement of estates, uncapable of a division among all the heirs, where the intestate dies without issue,

Settlement of intestate estates, where there is no issue.

Be it therefore enacted by the lieutenant governor, council and house of representatives, that where the real estate of any person, dying intestate and not leaving issue, cannot be divided among all the heirs without great prejudice to or spoiling the whole, the judge of the probate of wills in the county in which such intestate person last dwelt shall have power, and he is hereby authorized to order and assign the same to one or so many of the next of kin to such intestate in equal degree, or their legal representatives, as such estate will conveniently accommodate without prejudice to or spoiling the whole, preference being given to the male heirs among such as are of kin in equal degree, in manner as the same might by law have been settled on the children of the intestate in case he or she had left issue.

CHAPTER CCXXXVII.

AN ACT IN ADDITION TO AND FOR RENDERING MORE EFFECTUAL AN ACT FOR THE RESTRAINING THE TAKING EXCESSIVE USURY.

WHEREAS in and by an act made and passed in the fifth year of the reign of king William and queen Mary, intitled an act for the restraining the taking excessive usury, it is enacted, "that no person or persons whatsoever from and after the first day of August, in the year of our Lord one

thousand six hundred and ninety three, upon any contract to be made after that time, shall take directly or indirectly, for loan of any monies, wares, merchandize or other commodities whatsoever, above the value of six pounds for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time," notwithstanding which many persons do presume to take and reserve much more for interest than the rate aforesaid, to the discouragement of industry, trade and commerce in this province, the discovery and detecting whereof is difficult, and the provision by the law already made has proved in many cases ineffectual, for preventing whereof for the future,

Penalty for taking more than six per cent. for interest.

Be it enacted by the lieutenant governor, council and house of representatives, that when and so often as any person or persons are or shall be sued on any bond, contract, mortgage or assurances whatsoever, made after the tenth day of April, anno Domini one thousand seven hundred and fifty, for the payment of any monies, wares, or merchandize, or other commodities whatsoever, whereby or wherein any sum is given, secured or taken for the forbearing or giving day of payment, for a longer or shorter time, then and in such case, the creditor being alive, if the debtor or debtors shall come into court where the said cause is to be tried, and shall offer to make oath, and, if required by the court, actually swear to the same, that there is taken, reserved or secured by such bond, contract, mortgage or assurance, above the rate of six pounds in the hundred for the forbearance of the same, whether it be money or other things, for one year, and so after that rate for any greater or lesser sum, or for a longer or shorter time, or that the creditor or creditors have received more than at the rate of six pounds in the hundred for the loan of the money or other things sued for, such bond, contract, mortgage or assurance shall be utterly void, and the debtor fully and absolutely discharged from the payment of any monies, goods or other things lent, exchanged, bargained, sold or agreed for as aforesaid, unless the creditor or creditors will bona fide swear, that he, she or they, have not directly or indirectly, wittingly taken or received more than after the rate of six per cent. for forbearance or giving day of payment, and that by such bond, contract, mortgage or assurance, there is not reserved, secured or taken more than after the rate of six per cent. for forbearance or giving day of payment for the goods, monies or other things sued for or demanded; any law, usage or custom to the contrary notwithstanding.

Proof to be made by the debtor's oath.

Unless the creditor will discharge himself upon oath.

Provided, nothing in this act shall extend to the letting of cattle, or other usages of like nature, in practice amongst farmers, or maritime contracts amongst merchants, as bottomry, insurance or course of exchange, as hath been heretofore accustomed.

Proviso.

CHAPTER CCXXXVIII.

AN ACT IN EXPLANATION OF AN ACT, MADE IN THE REIGN OF KING WILLIAM THE THIRD, INTITLED AN ACT FOR REVIEW IN CIVIL CAUSES.

WHEREAS some doubt has arisen and may arise, whether the act, made in the thirteenth year of the reign of king William the third, intitled an act for review in civil causes, extends to judgments given on information filed by impost officers or their deputies for the declaration of the forfeiture of goods by them seized,

Explanation of an act on reviews.

Be it therefore enacted by the lieutenant governor, council and house of representatives, that the said act doth not, nor ever did, neither ought to be construed to extend to judgments given on such informations.

CHAPTER CCXXXIX.

AN ACT FOR PREVENTING AND SUPPRESSING OF RIOTS, ROUTS, AND UNLAWFUL ASSEMBLIES.

WHEREAS the provision already made by law has been found insufficient to prevent routs, riots, and tumultuous assemblies, and the evil consequences thereof, wherefore,

Officers to make proclamation when persons are riotously assembled.

SECT. 1. Be it enacted by the lieutenant governor, council and house of representatives, that from and after the publication of this act, if any persons to the number of twelve or more, being armed with clubs or other weapons, or if any number of persons consisting of fifty or upwards, whether armed or not, shall be unlawfully, riotously or tumultuously assembled, any justice of the peace, field officer or captain of the militia, sheriff of the county or under-sheriff, or any constable of the town, shall among the rioters, or as near to them as he can safely come, command silence while proclamation is making, and shall openly make proclamation in these or the like words,

Form of the proclamation.

Our sovereign lord the king chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act of

this province made in the twenty-fourth year of his majesty king George the second, for preventing and suppressing of riots, routs and unlawful assemblies. God save the king.

And if such persons so unlawfully assembled shall, after proclamation made, not disperse themselves within one hour, it shall be lawful for every such officer or officers, and for such other persons as he or they shall command to be assisting, to seize such persons and carry them before a justice of peace; and if such person shall be killed or hurt by reason of their resisting the persons so dispersing or seizing them, the said officer or officers and their assistants shall be indemnified and held guiltless; and all persons who, for the space of one hour after proclamation made as aforesaid, or to whom proclamation ought to have been made if the same had not been hindered, shall unlawfully, routously, riotously and tumultuously continue together, or shall wilfully let or hinder any such officer who shall be known, or shall openly declare himself to be such, from making the said proclamation, shall forfeit all their lands and tenements, goods and chattels, to his majesty, or such a part thereof as shall be adjudged by the justices before whom such offence shall be tried, to be applied towards the support of the government of this province, and shall be whipped thirty-nine stripes on the naked back at the publick whipping-post, and suffer one year's imprisonment, and once every three months during said imprisonment receive the same number of stripes on the naked back at the publick whipping-post as aforesaid; and if any such person or persons so riotously assembled shall demolish or pull down, or begin to demolish or pull down any dwelling-house or other house parcel thereof, any house built for publick uses, any barn, mill, malt-house, store-house, shop or ship, he or they shall suffer the same pains and penalties as are before provided in this act.

Penalty for disobedience.

Sect. 2. And be it further enacted, that this act shall be read at every general sessions of the peace, and at the anniversary meeting of each town within this province annually; and no person shall be prosecuted for any offence contrary to this act, unless prosecution be commenced within twelve months after the offence committed.

This act to be read annually.

Provided always, that where there shall appear any circumstances to mitigate or alleviate any of the offences against this act, in the judgment of the court before which such offence shall be tried, it shall and may be lawful for the judges of such court to abate the whole of the punishment of whipping, or such part thereof as they shall judge proper, any thing in this act to the contrary notwithstanding.

Judges empowered to abate the punishment of whipping, in case.

CHAPTER CCXL.

AN ACT FOR HOLDING A SUPERIOUR COURT OF JUDICATURE, COURT OF ASSIZE AND GENERAL GAOL DELIVERY, AT OTHER TIMES THAN THOSE ALREADY APPOINTED BY LAW.

WHEREAS the time by law appointed for holding the superiour court of judicature, court of assize and general gaol delivery, is but once in six months in any county, and but once a year in many counties, by reason whereof, felons, by making their escape, or by the death of witnesses, may avoid justice, or great charges may arise by keeping such offenders in gaol, as well as damages accrue to witnesses by being detained until the time by law appointed for holding the court where such offenders are triable, and as there is not by the laws of this province sufficient provision made for remedying the inconveniences aforesaid,

Governor and council empowered to call a special court of assize, &c.

SECT. 1. Be it enacted by the lieutenant governor, council and house of representatives, that the governor or commander in chief for the time being, by and with the advice and consent of the council, may, upon such occasions, by precept directed to the justices of the superiour court of judicature, court of assize and general gaol delivery, order and appoint them to hold a superiour court of judicature, court of assize and general gaol delivery, for inquiring of, hearing and determining all such felonies on certain days and places by them to be appointed in the county where such offence by law is triable; and that the justices aforesaid, upon the receipt of such precept, shall cause process to issue for summoning grand jurors and petit jurors out of the several towns, as is usual for the stated courts, to attend such special court at the time and place appointed by the justices thereof for holding the same, and make out all other necessary process, and do whatever else is or may be requisite to be done for the holding such court, inquiring of such felonies, hearing and determining the same, giving judgment and awarding execution thereon, as fully as the superiour court of judicature, court of assize and general gaol delivery might or could do at a time by law appointed for holding such court.

How the court may be adjourned.

SECT. 2. And be it further enacted, that if any such special court cannot be held on the day appointed therefor, any one of the justices thereof may adjourn the same from time to time until such court can be held.

CHAPTER CCXLI.

AN ACT PROVIDING FOR THE SUPPORT OF MINISTERS IN NEW PLANTATIONS.

WHEREAS the power by law granted to the courts of general sessions of the peace within this province to afford relief to ministers, who shall not be suitably supported, is so restrained as not to extend to the relief of such ministers as are or may be settled in new plantations not erected into towns or districts, and it being necessary that provision be made by law for the encouragement and maintenance of such,

Ministers of new plantations, their salaries to be assessed by the court of general sessions of the peace.

SECT. 1. Be it therefore enacted by the lieutenant governor, council and house of representatives, that in case of neglect in the proprietors or occupants of any new plantation within this province, in fulfilling their contract or agreement with the minister or ministers of such plantation, qualified as the law directs, respecting his or their settlement or support, the court of general sessions of the peace, within and for the county wherein such plantation is, are hereby empowered and directed, upon application to them made for that purpose, to provide for the relief of such minister or ministers; and in case the assessors for such new plantation do or shall neglect duly to assess and apportion the full sum voted or agreed on, for the settlement or support of such minister or ministers, according to the true intent of the contract, the said court are hereby empowered and directed to appoint three or more sufficient freeholders, within the same county, to assess the occupants or proprietors, who are parties to such contract, such sum as, at the time of making such application, shall be judged by said court to be due to such minister or ministers by virtue of such contract, together with such further sum, in case payment has been long and unreasonably delayed, as said court shall judge sufficient to afford to such minister or ministers meet recompense for any damages sustained by such neglect, such assessment to be made on the occupants or proprietors, in such proportion as they may have agreed among themselves, or, if no such agreement shall appear, as said court shall judge most just and equitable; and said court shall make out and affix to a list of such assessment a warrant, in like form, mutatis mutandis, as is by law prescribed for levying and collecting of town rates or assessments, which warrant shall be signed by the clerk of such court, and directed to the collector or collectors of taxes in such plantation, if any there be, or to such person or persons as said court shall appoint for that

Warrant in usual form to be directed to the collectors to collect said assessment.

purpose, requiring him or them to collect and levy the sum total of the said list, and to pay in the same unto such minister or ministers, or to such person or persons as said court shall appoint to receive the same for his or their use, and such collector or collectors, or other person or persons to whom such warrant shall be directed, are hereby fully authorized to execute the same, and to collect such assessment of the persons named in such list, wheresoever they may be found within this province.

Delinquent assessors and collectors to be convented before the court.

Fine to be imposed.

SECT. 2. And be it further enacted, that when and so often as timely payment of his or their dues shall be withheld from the minister or ministers of such new plantation, the justices of the said court of general sessions of the peace are hereby empowered and directed to convent before them the assessors, collector or collectors, or such others as have been or may be specially appointed by the occupants or proprietors of such plantation to take care in that matter, and upon conviction of neglect therein, to impose a fine on each delinquent not exceeding forty shillings for the first offence, and upon every after conviction of such neglect to impose a fine of four pounds, to be levied by distress and sale of the offender's goods, and to be applied for the making of meet satisfaction unto the assessors or collectors that may have been appointed and employed by said court in the service aforesaid, the remainder, if any be, to be paid to the county treasurer, for defraying the necessary charges of the county.

CHAPTER CCXLII.

AN ACT IN ADDITION TO AN ACT FOR REGULATING FENCES, CATTLE, &c.

WHEREAS in an by an act made and passed in the fifth year of the reign of king William and queen Mary, intitled an act for regulating fences, cattle, &c. it is enacted, that "for every sheep in every town going on the commons without being under the hand of a shepherd, from the first of May to the last of October in every year, the owner or keeper of the said sheep shall pay the sum of three pence for every sheep at any time so found running on the common, not under the hand of a shepherd or keeper, between the first of May and last of October yearly," and it being found by experience that great damage is often done by sheep in the

month of April, especially among English grain, therefore to prevent such inconveniences for the future,

Be it enacted by the lieutenant governor, council and house of representatives, that for every sheep in any town within this province going on the commons or ways, without being under the immediate care and inspection of a shepherd or keeper, from the fifteenth of March to the last day of October in every year, the owner or keeper of such sheep shall pay three pence for each and every sheep so found running on the commons or ways, without a shepherd or keeper at any time from the fifteenth day of March to the last of October.

Fine for sheep going at large between the 15th of March and the last of October.

Provided nevertheless, that it shall be in the power of any town, at their annual meeting in March, by a vote to give liberty for sheep to go at large the whole or any part of the time between the said fifteenth day of March and the first day of May; and in such case it shall be lawful for the sheep in such town to go at large during such time as shall be so voted; any thing in this or the before recited act to the contrary notwithstanding.

Proviso.

CHAPTER CCXLIII.

AN ACT FOR REGULATING THE COMMENCEMENT OF THE YEAR, AND FOR CORRECTING THE CALENDAR NOW IN USE.

WHEREAS the legal supputation of the year of our Lord in that part of Great Britain called England, according to which the year beginneth on the twenty-fifth day of March, hath been found by experience to be attended with divers inconveniences, not only as it differs from the usage of neighbouring nations, but also from the legal method of computation in that part of Great Britain called Scotland, and from the common usage throughout the whole kingdom, and thereby frequent mistakes are occasioned in the dates of deeds and other writings, and disputes arise therefrom, and whereas the calendar now in use throughout all his majesty's British dominions, commonly called the Julian calendar, hath been discovered to be erroneous, by means whereof the vernal or spring equinox, which, at the time of the general council of Nice, in the year of our Lord three hundred and twenty-five, happened on or about the twenty-first day of March, now happens on the ninth or tenth day of the same month, and the said error is still increasing, and if

not remedied, would, in process of time, occasion the several equinoxes and solstices to fall at very different times in the civil year from what they formerly did, which might tend to mislead persons ignorant of the said alteration, and whereas a method of correcting the calendar, in such manner as that the equinoxes and solstices may for the future fall nearly on the same nominal days on which the same happened at the time of the said general council, hath been received and established, and is now generally practised by almost all other nations of Europe, and whereas it will be of general convenience to merchants, and other persons corresponding with other nations and countries, and tend to prevent mistakes and disputes in or concerning the dates of letters and accounts, if the like correction be received and established in his majesty's dominions, may it therefore please your majesty, that it may be enacted,

The old supputation of the year, not to be made use of after Dec. 1751.

SECT. 1. And be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present parliament assembled, and by the authority of the same, that in and throughout all his majesty's dominions and countries in Europe, Asia, Africa and America, belonging or subject to the crown of Great Britain, the said supputation, according to which the year of our Lord beginneth on the twenty-fifth day of March, shall not be made use of from and after the last day of December, one thousand seven hundred and fifty-one; and that the first day of January, next following the said last day of December, shall be reckoned, taken, deemed, and accounted, to be the first day of the year of our Lord one thousand seven hundred and fifty-two; and the first day of January, which shall happen next after the said first day of January one thousand seven hundred and fifty-two, shall be reckoned, taken, deemed, and accounted, to be the first day of the year of our Lord one thousand seven hundred and fifty-three, and so on from time to time, the first day of January, in every year which shall happen in time to come, shall be reckoned, taken, deemed and accounted, to be the first day of the year; and that each new year shall accordingly commence, and begin to be reckoned, from the first day of every such month of January, next preceding the twenty-fifth day of March on which such year would, according to the present supputation, have begun or commenced; and that from and after the said first day of January, one thousand seven hundred and fifty-two, the several days of each month shall go on, and be reckoned and numbered, in the same order, and the feast of Easter, and other moveable feasts thereon depending, shall be ascertained according to the same method, as they now are, until the second day of September, in the said year one thousand seven hundred and fifty-two inclusive; and that the natural day, next immediately following the said second day of Sep-

Year to commence for the future on 1 January.

The days to be numbered in the same order, and the moveable feasts to be ascertained, as they now are,

tember shall be called, reckoned, and accounted, to be the fourteenth day of September, omitting for that time only the eleven intermediate nominal days of the common calendar, and that the several natural days, which shall follow and succeed next after the said fourteenth day of September, shall be respectively called, reckoned and numbered forwards in numerical order from the said fourteenth day of September, according to the order and succession of days now used in the present calendar; and that all acts, deeds, writings, notes, and other instruments of what nature or kind soever, whether ecclesiastical or civil, publick or private, which shall be made, executed, or signed, upon or after the said first day of January, one thousand seven hundred and fifty-two, shall bear date according to the said new method of supputation; and that the two fixed terms of saint Hilary and saint Michael, in that part of Great Britain called England, and the courts of great sessions, in the counties Palatine and in Wales, and also the courts of general quarter sessions, and general sessions of the peace, and all other courts of what nature or kind soever, whether civil, criminal or ecclesiastical, and all meetings and assemblies, of any bodies politick or corporate, either for the election of any officers or members thereof, or for any such officers entering upon the execution of their respective offices, or for any other purpose whatsoever, which by any law, statute, charter, custom or usage, within this kingdom or within any other the dominions or countries subject or belonging to the crown of Great Britain, are to be holden and kept on any fixed or certain day of any month, or on any day depending upon the beginning, or any certain day of any month, except such courts as are usually holden or kept with any fairs or marts, shall, from time to time from and after the said second day of September, be holden and kept upon or according to the same respective nominal days and times, whereon or according to which the same are now to be holden, but which shall be computed according to the said new method of numbering and reckoning the days of the calendar, as aforesaid, that is to say, eleven days sooner than the respective days whereon the same are now holden and kept; any law, statute, charter, custom or usage to the contrary thereof in any wise notwithstanding.

until 2 Sept. 1752 inclusive, and the day following to be accounted 14 Sept. omitting for that time the intermediate 11 nominal days.

All writings after 1 Jan. 1752, to be dated according to the new style.

Hilary and Michaelmas terms, and all courts, to be held on the same nominal days and times they now are, after the said 2 Sept.

Courts held with fairs of marts excepted.

And for the continuing and preserving the calendar or method of reckoning and computing the days of the year in the same regular course, as near as may be, in all times coming,

SECT. 2. Be it further enacted by the authority aforesaid, that the several years of our Lord one thousand eight hundred, one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth years of our Lord, which shall happen in time to come, except only every fourth hundredth year of our

Hundredth years, except every 4th hundred, to be deemed

common years, consisting of 365 days.

Lord, whereof the year of our Lord two thousand shall be the first, shall not be esteemed or taken to be bissextile or leap years, but shall be taken to be common years, consisting of three hundred and sixty-five days, and no more; and that the years of our Lord two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year of our Lord, from the said year of our Lord two thousand inclusive, and also all other years of our Lord, which by the present supputation are esteemed to be bissextile or leap years, shall for the future, and in all times to come, be esteemed and taken to be bissextile or leap years, consisting of three hundred and sixty-six days, in the same sort and manner as is now used with respect to every fourth year of our Lord.

Years which are to be accounted bissextile or leap years, consisting of 366 days.

Easter and the other moveable feasts not to be observed after the said 2d Sept. according to the table now prefixed to the book of common prayer.

And whereas, according to the rule prefixed to the book of common prayer of the church of England, Easter day is always the first Sunday after the first full moon which happens next after the one and twentieth day of March, and if the full moon happens upon a Sunday, Easter day is the Sunday after, which rule was made in conformity to the decree of the said general council of Nice for the celebration of the said feast of Easter, and whereas the method of computing the full moons now used in the church of England, and according to which the table to find Easter for ever, prefixed to the said book of common prayer, is formed, is by process of time become considerably erroneous, and whereas a calendar, and also certain tables and rules for the fixing the true time of the celebration of the said feast of Easter, and the finding the times of the full moons on which the same dependeth, so as the same shall agree as nearly as may be with the decree of the said general council, and also with the practice of foreign countries, have been prepared, and are hereunto annexed,

And the said table and column of the golden numbers to be left out, and the new calendar, tables and rules, to be prefixed in the room thereof.

SECT. 3. Be it therefore further enacted by the authority aforesaid, that the said feast of Easter, or any of the moveable feasts thereon depending, shall from and after the said second day of September be no longer kept or observed in that part of Great Britain called England, or in any other the dominions or countries subject or belonging to the crown of Great Britain, according to the said method of supputation now used, or the said table prefixed to the said book of common prayer; and that the said table and also the column of golden numbers, as they are now prefixed to the respective days of the month in the said calendar, shall be left out in all future editions of the said book of common prayer, and that the said new calendar, tables and rules hereunto annexed shall be prefixed to all such future editions of the said book, in the room and stead thereof; and that from and after the said second day of September, all and every the fixed feast days, holy days and fast days, which are now kept and observed by the church of England, and also the

The feasts and fasts,

several solemn days of thanksgiving and of fasting and humiliation, which by virtue of any act of parliament now in being are from time to time to be kept and observed, shall be kept and observed on the respective days marked for the celebration of the same in the said new calendar, that is to say, on the same respective nominal days on which the same are now kept and observed, but which, according to the alteration by this act intended to be made as aforesaid, will happen eleven days sooner than the same now do; and that the said feast of Easter, and all other moveable feasts thereon depending, shall from time to time be observed and celebrated according to the said new calendar, tables and rules hereunto annexed, in that part of Great Britain called England, and in all the dominions and countries aforesaid, wherein the liturgy of the church of England now is or hereafter shall be used; and that the two moveable terms of Easter and Trinity, and all courts of what nature or kind soever, and all meetings and assemblies of any bodies politick or corporate, and all markets, fairs, and marts and courts thereunto belonging, which by any law, statute, charter, custom or usage, are appointed, used or accustomed to be holden and kept at any moveable time or times depending upon the time of Easter, or any other such moveable feast as aforesaid, shall from time to time, from and after the said second day of September, be holden and kept on such days and times whereon the same shall respectively happen or fall, according to the happening or falling of the said feast of Easter, or such other moveable feasts as aforesaid, to be computed according to the said new calendar, tables and rules.

&c. of the church to be observed after the said 2d Sept. according to the new calendar.

Sect. 4. And be it further enacted by the authority aforesaid, that the several meetings of the court of session, and terms fixed for the court of exchequer in Scotland, the April meeting of the governor, bailiffs and commonalty of the company of conservators of the great level of the fens, and the holding and keeping of all markets, fairs and marts, whether for the sale of goods or cattle, or for the hiring of servants, or for any other purpose, which are either fixed to certain nominal days of the month, or depending upon the beginning or any certain day of any month, and all courts incident or belonging to, or usually holden or kept with any such fairs or marts, fixed to such certain times as aforesaid, shall not, from and after the said second day of September, be continued upon or according to the nominal days of the month, or the time of the beginning of any month, to be computed according to the said new calendar, but that from and after the said second day of September the said courts of session and exchequer, the said April meeting, and all such markets, fairs and marts as aforesaid, and all courts incident or belonging thereto, shall be holden and kept upon or according to the same natural days, upon or according to which

Courts of session and exchequer in Scotland, and markets, fairs and marts, to be held upon the same natural days they should have been holden on, if this act had not been made.

the same should have been so kept or holden, in case this act had not been made, that is to say, eleven days later than the same would have happened according to the nominal days of the said new supputation of time, by which the commencement of each month, and the nominal days thereof, are anticipated or brought forward by the space of eleven days, any thing in this act contained to the contrary thereof in any wise notwithstanding.

And whereas, according to divers customs, prescriptions and usages, in certain places within this kingdom, certain lands and grounds are, on particular nominal days and times in the year, to be opened for common of pasture, and other purposes, and at other times the owners and occupiers of such lands and grounds have a right to inclose or shut up the same, for their own private use, and there is, in many other instances, a temporary and distinct property and right vested in different persons, in and to many such lands and grounds, according to certain nominal days and times in the year, and whereas the anticipating or bringing forward the said nominal days and times by the space of eleven days, according to the said new method of supputation, might be attended with many inconveniences,

SECT. 5. Be it therefore further declared, provided and enacted by the authority aforesaid, that nothing in this act contained shall extend, or be construed to extend, to accelerate or anticipate the days or times for the opening, inclosing or shutting up any such lands or grounds as aforesaid, or the days or times on which any such temporary or distinct property or right in or to any such lands or grounds as aforesaid is to commence, but that all such lands and grounds as aforesaid shall, from and after the said second day of September, be, from time to time, respectively opened, inclosed or shut up, and such temporary and distinct property and right in and to such lands and grounds as aforesaid shall commence and begin upon the same natural days and times on which the same should have been so respectively opened, inclosed or shut up, or would have commenced or begun, in case this act had not been made, that is to say, eleven days later than the same would have happened, according to the said new account and supputation of time, so to begin on the said fourteenth day of September as aforesaid.

The natural days and times for the opening and inclosing of commons of pasture, not altered by this act.

SECT. 6. Provided also, and it is hereby further declared and enacted, that nothing in this present act contained shall extend, or be construed to extend, to accelerate or anticipate the time of payment of any rent or rents, annuity or annuities or sum or sums of money whatsoever, which shall become payable by virtue or in consequence of any custom, usage, lease, deed, writing, bond, note, contract or other agreement whatsoever, now subsisting, or which shall be made, signed, sealed or entered into, at any time before the said fourteenth

The natural days and times of payment of rents, annuities, sums of money, or interest.

day of September, or which shall become payable by virtue of an act or acts of parliament, now in force, or which shall be made before the said fourteenth day of September, or the time of doing any matter or thing, directed or required by any such act or acts of parliament to be done in relation thereto, or to accelerate the payment of, or increase the interest of any such sum of money which shall become payable as aforesaid, or to accelerate the time of the delivery of any goods, chattels, wares, merchandize or other things whatsoever, or the time of the commencement, expiration or determination of any lease, or demise of any lands, tenements or hereditaments, or of any other contract or agreement whatsoever, or of the accepting, surrendering or delivering up the possession of any such lands, tenements or hereditaments, or the commencement, expiration or determination of any annuity or rent, or of any grant for any term of years, of what nature or kind soever, by virtue or in consequence of any such deed, writing, contract or agreement, or the time of attaining the age of one and twenty years, or any other age requisite by any law, custom, or usage, deed, will or writing whatsoever, for the doing any act, or for any other purpose whatsoever, by any person or persons now born, or who shall be born before the said fourteenth day of September, or the time of the expiration or determination of any apprenticeship or other service, by virtue of any indenture, or of any articles under seal, or by reason of any simple contract or hiring whatsoever, but that all and every such rent and rents, annuity and annuities, sum and sums of money, and the interest thereof, shall remain and continue to be due and payable, and the delivery of such goods and chattels, wares and merchandize, shall be made, and the said leases and demises of all such lands, tenements and hereditaments, and the said contracts and agreements shall be deemed to commence, expire and determine, and the said lands, tenements and hereditaments shall be accepted, surrendered and delivered up, and the said rents and annuities, and grants for any term of years, shall commence, cease and determine at and upon the same respective natural days and times, as the same should and ought to have been payable or made, or would have happened, in case this act had not been made; and that no further or other sum shall be paid or payable for the interest of any sum of money whatsoever, than such interest shall amount unto for the true number of natural days for which the principal sum bearing such interest shall continue due and unpaid; and that no person or persons whatsoever shall be deemed or taken to have attained the said age of one and twenty years, or any other such age as aforesaid, or to have completed the time of any such service as aforesaid, until the full number of years and days shall be elapsed on which

Or of the delivery of goods.

Commencement or expiration of leases, &c.

Or of attaining the age of 21 years, &c. not altered by this act.

such person or persons respectively would have attained such age, or would have completed the time of such service as aforesaid, in case this act had not been made; any thing herein before contained to the contrary thereof in any wise notwithstanding.

CHAPTER CCXLIV.

AN ACT TO ENABLE AND EMPOWER THE INHABITANTS OF NEW PLANTATIONS WITHIN THIS PROVINCE ENJOINED AND SUBJECTED BY LAW, OR THAT MAY HEREAFTER BE ENJOINED AND SUBJECTED TO PAY PROVINCE AND COUNTY TAXES, TO ASSESS, LEVY AND COLLECT THE SAME.

WHEREAS there are sundry new plantations within this province, by law enjoined to pay province and county taxes, that are not empowered to choose the proper officers to assess, levy and collect the said taxes,

Freeholders of new plantations to have a meeting in August next to choose officers.

SECT. 1. Be it enacted by the lieutenant governor, council and house of representatives, that the freeholders of every such new plantation be and are hereby empowered and required to assemble together on the first Monday of August next, at the usual places for holding their publick meetings, and being so assembled, shall choose a moderator and clerk for said meeting, which clerk shall be immediately sworn truly to enter and record all such votes as shall be passed at said meeting, by a justice of the peace if any be present, otherwise by the moderator of said meeting, and shall then proceed to choose three assessors to make a valuation of estates and faculties of persons in such plantations, agreeable to law, and to assess such province and county taxes as are or shall be set on the inhabitants of such new plantation, to be paid this or any former year, as also a collector to levy and collect the same, which assessors and collectors shall be sworn to the faithful discharge of the duty of their respective offices before a justice of the peace for the county within which such new plantation lies, if present, otherwise by the clerk for said meeting.

Inhabitants of new plantations to meet in

SECT. 2. And be it further enacted, that the inhabitants of the abovesaid plantations, qualified as by law is required of voters in town affairs, are hereby empowered and enjoined, sometime in the month of March annually, to assemble together, upon due notice given by the collector or collectors

then in office, pursuant to warrant under the hands of the assessors, or the major part of them, who shall have been last chosen, and who are hereby empowered and required to issue such warrant at such time and place as shall be by said assessors appointed, and shall then and there choose a clerk for said meeting, who shall be sworn in manner as is before prescribed for the swearing the clerk for the first meeting, and three assessors and one or more collectors to assess and levy such province and county taxes on said inhabitants as they shall from time to time be enjoined by law to pay; and said assessors and collectors, as well those that shall be chosen on the said first Monday of August as those who shall by virtue of this act be hereafter annually chosen in said new plantations, shall be liable to all such penalties, in case they or any of them shall refuse to be sworn and serve in said offices, or in case of any default therein, as the assessors of province and county taxes for towns are by law liable, or may be subjected to; and said assessors are hereby empowered and required to make out such warrants, mutatis mutandis, as assessors of county taxes for towns are by law empowered to make out, and to direct the same to said collector or collectors; and the said collector or collectors are hereby empowered to levy, collect and enforce the payment of all the aforesaid taxes in all such ways and by all such means as constables and collectors of province and county taxes are by law empowered to do of the inhabitants of the towns within this province.

March annually.

Duty of assessors and collectors of taxes.

And the clerk at said annual meeting shall, immediately on the election of said assessors and collectors, make and give out to the collector or collectors for the then last preceding year a list of the names of those persons who shall be chosen assessors and collectors at said meeting for the ensuing year, which collector or collectors shall forthwith thereupon summon each of said assessors and collectors for the then ensuing year to appear at a certain time and place, within the space of seven days from the time of their election, before a justice of the peace, if any dwell in such new plantation, or otherwise before the clerk chosen at said meeting, to take the oath, mutatis mutandis, which assessors and collectors of publick taxes for towns are by law enjoined to take, which oath said clerk in such case is hereby empowered to administer.

Duty of the clerks.

And to the intent that the inhabitants of said new plantations may have due notice and warning given them of the meeting, which they are before in this act empowered and required to hold on the first Monday of August next, and of the ends and purposes thereof,

Sect. 3. Be it enacted, that each clerk of the court of general sessions of the peace for the several counties within this province, wherein any of the aforesaid new plantations lie,

Clerk of the peace in the county to notify the meeting in August next.

shall, in some convenient time before the said first Monday of August next, make and cause to be delivered a warrant under his hand, directed to some principal inhabitant in each of said new plantations within their respective counties, therein expressing the time, place and purposes for holding said meetings, and requiring such inhabitants to notify all the inhabitants of said new plantations, qualified as in this act is provided, of said meeting, and the time, place and purposes thereof, three days at least before the time set in this act for holding the same, which warrant the inhabitant, to whom said warrant shall be directed, is hereby enjoined and required to execute and make return of under his hand into said meeting, under the penalty of forty shillings, to be recovered by complaint, information or action of debt before any of his majesty's justices of the peace for the county wherein said inhabitant making default in the premises shall dwell, said forty shillings to be for the use and benefit of the person or persons who shall inform or sue for the same.

CHAPTER CCXLV.

AN ACT IN FURTHER ADDITION TO THE ACT, INTITLED AN ACT FOR REVIEW IN CIVIL CAUSES.

WHEREAS the defendant in any personal action may, by force of the act, made in addition to the act, intitled an act for review in civil causes, have execution of the judgment of the superiour court of judicature, court of assize and general delivery, given on the trial of the appeal, stayed six months in some counties, and a year in others, only by giving bond with security approved of by that court at the time of entering such judgment, conditioned to prosecute a writ of review of such action with effect at the next superiour court of judicature, court of assize and general gaol delivery, to be holden in and for the county where such judgment is given, and to answer and pay the original plaintiff double interest for the debt recovered, and double additional costs in case the judgment be affirmed, although the estate attached by force of the original writ is not thereby held or subjected to satisfy the plaintiff's demand for more than thirty days after the judgment given on the appeal, and in all cases where bail is given to the action, the sureties cannot be compelled either to satisfy the judgment or deliver up the principal,

Wherefore, for preventing creditors being defrauded of their just debts by executions being so stayed,

Be it enacted by the lieutenant governor, council and house of representatives, that execution of the judgment of the superiour court of judicature, court of assize and general gaol delivery, given on the trial of the appeal in any suit, shall not be stayed, unless the original defendant, his executors or administrators give bond at the time of entering such judgment to the party or parties that obtained the same, with sufficient sureties, to be approved of by the court, in double the sums recovered, to review the action at the next superiour court of judicature, court of assize and general gaol delivery to be holden in and for that county, and to pay to the party or parties that obtained the judgment, upon the trial of the appeal, the sum so recovered, with interest therefor, after the rate of twelve per cent. per annum, and double the costs arising on such review, if the judgment be not thereon reversed, in whole or in part, or otherwise satisfied, and if reversed in part only, then to pay him or them that obtained the judgment on the trial of the appeal what remains due by force thereof, and is not reversed by the judgment of said court given on such review or otherwise satisfied, together with interest therefor after the rate of six per cent. per annum.

Bond to be given for prosecuting reviews where execution is stayed in double the sum recovered and costs.

Provided always, that nothing in this act shall extend to any suit already commenced, wherein upon the mean process bail was given or estate attached.

Proviso.

CHAPTER CCXLVI.

AN ACT FOR THE BETTER REGULATION OF THE COURSE OF JUDICIAL PROCEEDINGS.

Whereas, by an act made and passed in the second year of the reign of queen Anne, it is provided, that "all pleas in bar or abatement shall be made originally in the inferiour courts, in suits there brought, and that when a writ shall by judgment of court be barred or abated, and the plaintiff or demandant appeals from such judgment to the superiour court of judicature, if upon hearing the appeal, the superiour court, notwithstanding the pleas in bar or abatement, adjudge the writ to be good and well brought, they shall reverse the judgment of the inferiour court, and award to the appellant his full costs of both courts, and the next session of the inferiour court holden for the same county

shall proceed to trial of the merits of the cause upon the same writ without any delay, a new entry thereof being made, and that the same rule and method of proceeding be observed in appeals, to be made from the judgment in bar or abatement given by any justice of the peace, to the inferiour court of common pleas," in which course of proceedings suits are not only frequently unreasonably delayed, but the parties are therein put to needless expense,

To the end therefore that justice may more speedily and with less expense be done,

Upon reversing judgment in abatement of writs, the court to proceed to try the cause on the merits.

Be it enacted by the lieutenant governor, council and house of representatives, that when the superiour court of judicature, court of assize and general gaol delivery shall reverse a judgment given by any inferiour court of common pleas for abating a writ, and when any inferiour court of common pleas shall reverse a like judgment given by a justice of the peace, the respective courts that reverse the judgment shall proceed to try the cause, give judgment therein, and award execution thereon.

CHAPTER CCXLVII.

AN ACT IN FURTHER ADDITION TO THE ACT FOR LIMITATION OF ACTIONS AND FOR AVOIDING SUITS AT LAW WHERE THE MATTER IS OF LONG STANDING.

WHEREAS in a late law of this province, intitled "an act in addition to and for explanation of an act, intitled an act for limitation of actions and avoiding suits at law where the matter is of long standing," made and passed in the twenty-second year of his present majesty's reign, the time limited for commencing of all actions of account, and upon the case, excepting as therein is excepted, will expire in September next, and whereas the difficulties arisen by the exchange of the medium of trade in this province, and the prevalency of the small pox in Boston, and sundry other towns in this government, render it almost impracticable to have such accounts and actions of the case settled within the time by said act limited for that purpose,

Be it therefore enacted by the lieutenant governor, council and house of representatives, that the time for commencing of actions of accounts and of the case, by said act limited as aforesaid, be and the same is hereby extended to

the first day of September, which will be in the year of our Lord, one thousand seven hundred and fifty-four; and no suit hereafter to be brought in such cases shall be barred, if commenced before the expiration of said term.

CHAPTER CCXLVIII.

AN ACT IN ADDITION TO AN ACT FOR THE MORE SPEEDY EXTINGUISHMENT OF FIRE AND PRESERVING GOODS ENDANGERED BY IT.

WHEREAS in and by an act made and passed in the eighteenth year of his present majesty's reign, intitled "an act for the more speedy extinguishment of fire and preserving goods endangered by it," it is enacted that the several towns within this province may, if they see fit, at their anniversary meeting in March annually, appoint a suitable number of persons, not exceeding ten, who shall be denominated firewards, whose particular business shall be to take care and govern at fires which from time to time may break out, as in and by said act they are directed and empowered to do, and whereas by experience the firewards who have been annually chosen by the town of Boston have been found to be of great use and service to the said town at times of fires, and it is apprehended it would greatly serve the said town if their numbers were increased,

Be it therefore enacted by the lieutenant governor, council and house of representatives, that it shall and may be lawful for the town of Boston, who at present have ten firewards, at any town meeting warned for that purpose, to elect and appoint two more meet persons as firewards, who shall serve in that office till their anniversary meeting in March next, and from thenceforward, as they shall see cause, to choose twelve persons for that purpose annually, who shall do the duty and be invested with the like powers and privileges as firewards in and by the said act are invested withal.

Town of Boston empowered to choose twelve firewards.

CHAPTER CCXLIX.

AN ACT FOR FURTHER REGULATING THE PROCEEDINGS OF THE COURTS OF PROBATE WITHIN THIS PROVINCE.

Executors of wills to account with the judge of probate.

SECT. 1. BE it enacted by the lieutenant governor, council and house of representatives, that every person named or to be named executor in any last will and testament, duly proved and approved, and who hath or shall accept of that trust, shall stand accountable to the judge of probate, for the time being, of the county where such last testament was or shall be so approved, for and concerning the estate of the testator in his or her hands or possession, and touching his or her proceedings in discharge of said trust, when thereunto lawfully required; and every such executor who, not having fully administered the estate of the testator, and paid his debts and legacies, shall refuse or neglect to account as aforesaid, on oath, at such reasonable time as the said judge shall assign, being duly cited thereunto by such judge, upon application to him made for that purpose by any heir, legatee or creditor, shall stand charged in the same manner, and incur the same penalties and forfeitures, to be alike recovered and applied, as, upon their refusal to exhibit an inventory, executors are liable to by force of the act, made in the twelfth year of his present majesty's reign, intitled an act for the more effectual obliging of executors to inventory the estates of their testators.

Penalty.

Proviso in case the executor be a residuary legatee.

Provided always, that nothing in this act foregoing shall be understood to extend to any executor, who is or may be the residuary legatee to any last will and testament, and who may or shall have given bond for the payment of debts and legacies in manner as is by law already provided.

Commissioners to be under oath.

SECT. 2. And be it further enacted, that every commissioner for receiving the claims of the creditors to any estate, represented insolvent, shall be under oath faithfully to discharge the trust reposed in him, such oath to be administered by the judge of probate, in all cases where the commissioners shall live within ten miles of such judge's dwelling house, otherwise either by the said judge or by any justice of the peace for the county.

Judge of probate to issue warrant upon embezzlement.

SECT. 3. And be it further enacted, that when and so often as any person, suspected of concealing or embezzling any part of the estate of any person deceased, shall have been cited, pursuant to law, and shall refuse to appear before the judge of probate, the said judge is hereby empowered, by warrant under his hand and seal, directed to any sheriff, his deputy or constable, or any of them, to cause such sus-

pected person to be apprehended and brought before such judge, in order to his being examined and proceeded with as the law in such case doth direct.

Persons that have been intrusted or have any part of the estate in their hands to be proceeded with, in case of concealment.

SECT. 4. And be it further enacted, that the several judges of probate be and they are hereby empowered, by warrant as aforesaid, to convene before them any person that has been or may be intrusted by any executor or administrator with any part of the estate of the testator or intestate, and to be assisting to such executor or administrator in the execution of their trust, and shall refuse, upon due citation issued from the judge of probate for that purpose, to appear before him and render a full account upon oath of any money, goods or chattels, and of any bonds, accounts or other papers, left by the testator or intestate, which he shall have taken into his hands or custody, and of his proceedings for and on behalf of such executor or administrator in his capacity as such. And if such person shall refuse to render account as aforesaid, such judge may proceed against him, as judges of probate are by law authorized to proceed against any person or persons suspected of concealment, who refuse to acquit themselves on oath.

The judge to appoint guardians of minors above 14, in case.

SECT. 5. And be it further enacted, that when any minor above the age of fourteen years shall be cited by the judge of probate to choose a guardian, and such minor shall refuse or neglect to appear, or when any minor above the age of fourteen years, after appearing, shall refuse to choose a guardian, or any guardian chosen by such minor shall be unable to give sufficient security, or when any minor above the age of fourteen years shall be out of this province, in every such case the judge of probate shall have the same power to appoint a guardian as such judge by law would have, in case such minor were under the age of fourteen years.

Proviso in case a minor lives more than ten miles from the judge.

Provided nevertheless, that when any minor above the age of fourteen years, living more than ten miles from the judge's dwelling house, shall choose a guardian, such minor may have that choice certified to the judge by any justice of the peace in the same county, or by the town clerk, if no justice shall dwell in such town, which choice shall be deemed as good and valid in the law as if done in said judge's presence.

Judge to cite witnesses.

SECT. 6. And be it further enacted, that when any person shall be cited to appear as a witness before any judge of probate in any cause or hearing, and such person shall refuse to appear or to give evidence, he shall be liable to the like penalty or damage as he would be liable to for refusing to appear or give evidence in any of his majesty's courts within this province; and all sheriffs, deputy-sheriffs and constables are hereby required duly to serve all legal warrants or summons to them directed by any judge of probate; and all

How to proceed in case of contempt.

contempt of authority, in any cause or hearing, before any judge of probate, shall and may be punished in like manner as such contempt of authority in any of his majesty's courts within this province, might or could by law be punished.

CHAPTER CCL.

AN ACT FOR THE MORE EASY PARTITION OF LANDS OR OTHER REAL ESTATE, GIVEN BY WILL AND HELD IN COMMON AND UNDIVIDED AMONG THE DEVISEES.

WHEREAS it is usual for persons by their last wills to devise their real estates to sundry of their children or others, to be divided to and amongst them in some certain proportion, a division whereof cannot be obtained by the act of the parties, by reason of their disagreement or some legal incapacity that some of them are under, and other methods for obtaining such partition are attended with charge, delay, and other inconveniences, to the prejudice of such estate, for remedy whereof,

The judge of probate empowered to divide real estates given by will.

SECT. 1. Be it enacted by the lieutenant governor, council and house of representatives, that when and so often as any devisee, or his guardian, who holds any real estate, in partnership with any other person or persons, by force of any last will and testament, shall make application to the judge of probate of wills, &c. in the county where such estates lie, for a division thereof, it shall and may be lawful for such judge of probate to order the whole of the real estate so devised, or that part of it the partition whereof is requested, to be divided to and amongst the devisees in proportion according to the will of the testator, by five good and discreet freeholders of the same county, to be appointed by the judge of probate, and to be sworn to the due performance of that service by the said judge, or by a justice of the peace of the same county, in case the estate to be divided be not within ten miles from the dwelling house of the said judge, notice being first given to all parties concerned to be present at the making of such partition, if they see cause, which partition or division, being returned into the probate office, and approved by the judge, and there recorded, shall be valid in the law to all intents and purposes, unless upon the appeal of any party aggrieved at the partition so made, the same should be reversed or altered by the governor and council.

And whereas it sometimes happens that real estates, devised by will, lie in common and undivided with other real estate, and in order to a just and more convenient partition or division of the real estate so devised, it may be deemed necessary that partition or division should be first made between the estate so devised and the other estate lying in common therewith,

Division to be made, where lands lie in common.

SECT. 2. Be it further enacted, that in every such case it shall and may be lawful for the judge of probate of wills, &c. in the county where such estate lies, to empower the five freeholders, appointed as aforesaid, first to make partition or division between the lands or other real estate given by will and any other lands or real estate lying in common therewith, notice being first given to all parties as above directed, and the charge of the division of any estate by virtue of this act, such charge being first settled and allowed by the judge, shall be borne by the several persons interested in proportion to their respective interests therein.

Provisoes in disputable cases.

Provided, that no partition shall be made, where the proportion belonging to the devisees or any of them shall appear by the tenor of the devise to be disputable and uncertain.

Guardians to be appointed for minors out of the province.

Provided also, that where any of the persons interested are minors, or out of the province, guardians be first appointed for such minors according to law, and some discreet and indifferent person be appointed by said judge to represent and act for such absent party, who shall be allowed twelve months to appeal to the governor and council from such judgment.

CHAPTER CCLI.

AN ACT FOR FURTHER PREVENTING ALL RIOTOUS, TUMULTUOUS AND DISORDERLY ASSEMBLIES OR COMPANIES OF PERSONS, AND FOR PREVENTING BONFIRES IN ANY OF THE STREETS OR LANES WITHIN ANY OF THE TOWNS OF THIS PROVINCE.

WHEREAS many and great disorders have of late years been committed by tumultuous companies of men, children and negroes, carrying about with them pageants and other shews through the streets and lanes of the town of Boston and other towns within this province, abusing and insulting the inhabitants, and demanding and exacting money by menaces and abusive language, and besides the horrid profaneness, impiety and other gross immoralities usually found in

such companies, a person has lately been killed, when orderly walking in the streets of the town of Boston, by one or more belonging to such tumultuous company, and the aforesaid practices have been found by experience to encourage and cultivate a mobbish temper and spirit in many of the inhabitants, and an opposition to all government and order,

Persons disguised to go about with pageants and armed with any weapons exacting money, &c.

SECT. 1. Be it therefore enacted by the lieutenant governor, council and house of representatives, that if any persons, being more than three in number, and being armed, all or any of them, with sticks, clubs or any kind of weapons, or disguised with vizards, so called, or painted or discoloured faces, or being in any other manner disguised, shall assemble together, having any imagery or pageantry with them as a publick shew in any of the streets or lanes of the town of Boston, or any other town within this province, or if any person or persons, being of or belonging to any company, having any kind of imagery or pageantry for a publick show, shall, by menaces or otherwise, exact, require, demand or ask any money or other thing of value from any of the inhabitants or other persons in the streets, lanes or houses of any town within this province, every person, being of or assembled with such company, shall, for each offence, forfeit and pay the sum of forty shillings, or suffer imprisonment not exceeding one month, or if the offender shall be a negro servant, in lieu of the imprisonment, he may be whipped, not exceeding ten stripes at the discretion of the justice before whom the trial shall be.

To be punished by fine or imprisonment.

Negroes, &c. may be punished by whipping.

Persons carrying pageants, &c. in the night, though unarmed, to be punished.

SECT. 2. And be it further enacted, that if any persons, to the number of three or more, between sunsetting and sunrising, being assembled together in any of the streets or lanes of any town within this province, shall have any kind of imagery or pageantry for a publick shew, although none of the company so assembled shall be armed or disguised, or exact, demand or ask any money or thing of value, every person, being of such company, shall forfeit and pay the sum of forty shillings, or suffer imprisonment, not exceeding one month, or if the offender shall be a negro servant, in lieu of the imprisonment, he may be whipped, not exceeding ten stripes, at the discretion of the justice before whom the trial shall be.

And whereas bonfires have been sometimes kindled in the streets, lanes, and other parts of several of the towns of this province, to the endangering the lives and estates of the inhabitants,

Bonfires in streets or lanes forbidden.

SECT. 3. Be it further enacted, that if any person or persons shall set fire to any pile or any combustible stuff, or be any ways concerned in causing or making a bonfire in any street, lane, or any other part of any town within this province, such bonfire being within ten rods of any house or building, every person so offending shall for each offence

forfeit the sum of forty shillings, or suffer imprisonment not exceeding one month, or if the offender shall be a negro servant, in lieu of the imprisonment, he may be whipped not exceeding ten stripes, at the discretion of the justice before whom the trial shall be, the several fines in this act to be applied when recovered, one half to the poor of the town where the offence shall be committed, and the other half to him or them that shall inform and sue for the same; and all masters are hereby made liable to the payment of the several fines as aforesaid for the offences of their servants, and all parents for the offences of their children under age not being servants.

Penalty.

Masters and parents liable for their servants and children.

CHAPTER CCLII.

AN ACT FOR PREVENTING DAMAGE BY HORSES GOING AT LARGE.

SECT. 1. BE it enacted by the lieutenant governor, council and house of representatives, that all horses and horse kind of one year old and upwards, that shall be suffered to go at large, shall be constantly fettered with a sufficient pair of fetters, from the first day of April to the last day of November; and the owner of any such horse or horse kind, that shall be found going at large on the commons or ways in any town within this province, not being sufficiently fettered, shall forfeit and pay the sum of three shillings, to be recovered by action before a justice of the peace in the same county, and to be applied, one moiety thereof to the use of the poor of the town where such owner dwells, the other moiety to him or them that shall sue for the same.

Horse kind not to go at large without fetters.

Penalty.

Provided nevertheless, that it shall be in the power of any town, legally assembled for that purpose, to give liberty for horses going at large without fetters within the bounds of such town, or within such part or division of the town, from the first day of April to the last day of November, as shall be agreed on by the inhabitants at such meeting.

Proviso.

SECT. 2. And be it further enacted, that when the owner of any horse kind going at large without being fettered, as by this act is required, is unknown, in such case the party finding such horse or horse kind may impound them, and otherwise proceed with them as the law directs in case of strays.

When such horses are to be impounded.

CHAPTER CCLIII.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT DIRECTING HOW MEETINGS OF PROPRIETORS OF LANDS LYING IN COMMON MAY BE CALLED.

WHEREAS there are sundry tracts of common and undivided lands in this province, lying within no township or precinct, which are owned by considerable numbers of proprietors, and no effectual provision has as yet been made by law, either for calling meetings of the proprietors of such lands, or for the raising and collecting monies granted for the common good and service of such proprietors, whereby the settlement and improvement of such lands have been much obstructed and delayed,

Method of calling proprietors' meetings.

SECT. 1. Be it therefore enacted by the lieutenant governor, council and house of representatives, that whensoever five, where there are so many, or the major part of the owners or proprietors of such common lands, where the number shall be less, shall judge it expedient to have a meeting of the proprietors thereof, and shall thereupon by writing apply by petition to any justice of the peace for the county wherein such their lands as aforesaid lie, or to a justice of the peace through this province, to call a meeting of any such proprietors as aforesaid, to be had at such time and place and on such occasions as shall be expressed in such petition, such justice so applied unto is hereby authorized and directed to grant and issue out his warrant, directed to one of the proprietors desiring such meeting, or to the clerk of such propriety, if there be one, requiring him to notify and warn the other proprietors of such common lands to meet and assemble together at the time and place appointed therefor as aforesaid, which notice and warning shall be given by advertising the same, with the time, place and occasions of meeting, in the several Boston weekly newspapers, forty days at least before the day appointed for such meeting; and such proprietors may by themselves or their lawful attorneys at such meeting appoint such a method for calling their meetings for the future as they shall judge most convenient, which shall always be under the same regulations as all other proprietary meetings are, and may choose a clerk and such other officers as are usually chosen by other proprieties, then and from time to time as their occasions shall require, and may transact and pass upon any other matters and affairs for the benefit of such propriety, which the proprietors of new townships or plantations granted by this government are by law enabled to do, provided such matters be

Powers of the said proprietors in their meetings.

mentioned in the notifications for such meetings; and such clerk being duly sworn, as the clerks of other proprieties by law ought to be, shall have the like power with them.

To raise monies for the use of the propriety.

SECT. 2. And be it further enacted, that such proprietors, at any of their meetings pursuant to this act, may by themselves or their lawful attorneys grant and order any suitable sum or sums of money to be raised and levied upon their several rights in such lands equally and rateably, according to their respective interests and shares therein, for bringing forward and completing the settlement of such common lands, and for the prosecution or defending any lawsuits for or against such proprietors, and for carrying on and managing any other affairs for the common good of such proprieties; and every such proprietor as shall neglect to pay to the collector or treasurer or committee of such propriety such sum or sums of money as shall from time to time be duly granted and voted to be raised and levied upon his right and share in such lands for the space of six months to those who live in the province and twelve months to those who live out of the province, after such grant, and his proportion thereof shall be published in the several publick prints as aforesaid, then the committee of the proprietors of such common lands, or the major part of such committee may and are hereby fully empowered from time to time at a publick vendue to sell and convey away so much of such delinquent proprietor's right or share in said common lands as will be sufficient to pay and satisfy his tax or proportion of such grant, and all reasonable charges attending such sale, to any person that will give most for the same, notice of such sale being given in the said prints forty days at least before hand, and may accordingly execute and give a good deed or deeds of conveyance of the lands so sold, unto the purchaser thereof, to hold in fee simple.

And to make sale of the lands of the delinquents.

Provided nevertheless, that the proprietor or proprietors, whose right or share in such lands shall be so sold, shall have liberty to redeem the same in twelve months after said sale, by paying the sum the land sold for and charges, together with the further sum of twelve pounds for each hundred pounds produced by such sale, and so pro rata for any less or greater sum.

Proviso.

CHAPTER CCLIV.

AN ACT IN ADDITION TO THE SEVERAL LAWS OF THIS GOVERNMENT MADE FOR THE REGULATING GENERAL FIELDS.

WHEREAS by law the fence-viewers chosen in the several towns within this province are obliged to view defective and insufficient fence, in case complaint be made to them, and the person complaining pay them three shillings per diem, and for a less time sixpence an hour, and upon the fence-viewers finding the fence defective, he is obliged to notify the owner thereof, who hath six days by law allowed him to repair the same, which if he sufficiently repair within said term, the complainant who hath paid the fence-viewers for viewing the same cannot recover the money by him so paid, for remedy whereof,

Complainant not to pay the fence-viewer before he views.

SECT. 1. Be it enacted by the governor, council and house of representatives, that each and every fence-viewer within this province, and that hereafter may be chosen into said office, shall be obliged, upon complaint made to him, to view any insufficient fences without the complainant's first paying him therefor, and in case the owner of such insufficient fence neglect or refuse to pay him the fee allowed by law for viewing such fence, for the space of one month, he shall have and recover of the owner of said fence double the sum allowed by law for that service, but in case the fence complained of appear to the fence-viewer to be sufficient, that then the person complaining shall pay the like fee to the fence-viewer.

Owner of the fence to pay double fees, in case.

And whereas it often happens that horses, cattle and other creatures are found damage feasant in general fields, which are either clandestinely turned in, or are so unruly as to get in where the fence is sufficient and according to law, and when impounded the owners thereof will replevy the same because there may be some defect in the fence encompassing such general field, though the same may be at a great distance from the place where such creatures actually got into the field, and judgment recovered against the person impounding, which may be very unjust and unreasonable, therefore,

Creatures to be impounded unless the fence be proved insufficient.

SECT. 2. Be it further enacted, that when and so often as any creatures are taken in any general field and impounded, and a writ of replevin is taken out to replevy the same, the court or justice before whom the action is brought shall be and hereby is empowered to give judgment against the owner of said creatures, unless by such owner it be made to

appear they got into the field where the fence was insufficient at the time of their getting in, or were put in by some other person.

And whereas it often happens in fencing general fields for the convenience of fencing, considerable quantities of rocky and barren land, not capable of tillage, are taken into such fields, the owners of which are now by law obliged to fence for the same, and also pay taxes equal to the other lands in said field, whenever an assessment is made by the proprietors of such field, which is very unjust, therefore,

Owners of rocky unimproved land to pay for no part of the general fence.

SECT. 3. Be it further enacted, that all lands now lying in general fields, or that hereafter may be taken into the same, that are so rocky or barren that the owners thereof have never improved the same, either by mowing, ploughing or feeding, said owners shall not be obliged to fence for them any part of the fence encompassing such general fields, nor shall they be taxed for them in any rate raised by the proprietors of such field, until such time as they shall make improvement thereon.

CHAPTER CCLV.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT EMPOWERING JUSTICES OF THE PEACE TO DECIDE DIFFERENCES NOT EXCEEDING FORTY SHILLINGS.

WHEREAS in and by an act, made and passed in the ninth year of his late majesty king William the third, empowering justices of the peace to decide differences not exceeding forty shillings, it is among other things provided, that all justices shall keep fair records of all their proceedings from time to time, but no provision is therein made in case of a justice's death for executing a judgment given and recorded by him, which remains unsatisfied at the time of his decease,

Writ of scire facias to be issued on the judgment of a deceased justice.

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that where judgment is or shall be given by a justice of the peace in any civil action of which by law he had cognizance, and a fair record thereof made by him, if the same remains unsatisfied at the time of his decease, it shall and may be lawful for any justice of the peace of the same county, upon application made to him by the party who recovered the judgment, to issue out a writ

of scire facias thereon, returnable to himself in seven days, and upon the debtor's default of appearance, or not shewing just cause to the contrary, the same justice may award execution of such judgment, returnable to himself in thirty days, and likewise award reasonable costs on the scire facias; provided that no writ of scire facias shall be granted as aforesaid, unless application be made therefor within twelve months after the decease of the justice before whom the judgment was recovered.

Persons having such judgments in keeping to deliver an attested copy.

SECT. 2. And be it further enacted, that any person who hath in his or her keeping the records of a deceased justice (being requested by the party who hath a judgment there entered as aforesaid, and being tendered a reasonable sum for his or her time and trouble) shall without delay deliver an attested copy of such records to the person requesting the same, which copy certified on oath shall be received and accounted as sufficient evidence as if the justice was then living; and if he or she shall neglect it by the space of three days, he or she shall for his or her neglect forfeit the sum of three pounds to the use of the party aggrieved, to be by him recovered in an action of debt in any of his majesty's courts of record.

Penalty for neglect or refusal.

And whereas in and by an act made in the second year of the reign of her late majesty queen Anne, intitled an act relating to executors and administrators, provision is made in case of waste for awarding execution against an executor or administrator of his own proper goods or estate on a scire facias to be issued out of the clerk's office of the same court, where judgment has been recovered against the estate of a testator or intestate, but no provision hath been made in like cases cognizable before a justice of the peace,

Justices of peace empowered to issue such writs of scire facias.]

SECT. 3. Be it therefore further enacted, that in all such cases it shall and may be lawful for a justice of the peace to issue out a writ of scire facias, and award execution thereupon, in like manner as may be done in any court of record by virtue of the provision in this act last mentioned.

CHAPTER CCLVI.

AN ACT FOR THE MORE EASY RECOVERING THE CHARGES THAT ATTEND THE PARTITION AND SETTLEMENT OF REAL ESTATES, AND TO CAUSE THE PERSONS INTERESTED IN SUCH ESTATES TO BE DULY NOTIFIED BEFORE PARTITION BE ORDERED.

WHEREAS it sometimes happens that some of the persons interested in real estates refuse to pay their rateable proportion of the necessary charge which attends the dividing or settling the same,

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that when and so often as partition shall be made of any real estate by the rules of the common law, and when and so often as any real estate shall be settled or divided, agreeable to the special provision made by the laws of this province, in any and every such case when any one or more of the parties interested shall neglect or refuse to pay their just proportion of the charge which may attend such division or settlement, it shall and may be lawful for the court by which such division or settlement shall be made to issue forth a warrant of distress against any delinquent or delinquents interested as aforesaid.

Warrant of distress be issued on persons refusing to pay charges on the division of estates.

Provided an account of such charge be first laid before the said court, and the just proportion of the persons interested settled and allowed, they having been duly notified to be present at such settlement or allowance, if they see cause.

Proviso.

SECT. 2. And be it further enacted, that when and so often as any petition shall be preferred to the justices of the superiour court to order partition of any real estate held in common and undivided, the said justices shall not proceed to order such partition until it shall be made appear to them that the several persons interested in such estate, and living within this province, or the attorneys of such as are absent and have attorneys residing within this province, have been duly notified of such petition, and have had opportunity to make their exception to the granting the same.

Superiour court to notify persons concerned, before estates be divided.

CHAPTER CCLVII.

AN ACT IN ADDITION TO AN ACT MADE IN THE FIFTH YEAR OF HER LATE MAJESTY QUEEN ANNE, INTITLED AN ACT FOR A NEW CHOICE OF TOWN OFFICERS ON SPECIAL OCCASIONS.

WHEREAS in and by said act it is provided, that in case of the non-acceptance, death or removal of any person chosen to office in any of the towns in this province, at their annual meeting in March, the said towns may, upon due warning given and notice of the occasion, choose any officer or officers to fill up such vacancy, but by said act no provision is made respecting precincts, from which inconveniences have often happened,

Precincts to have the same power in choosing officers towns have.

Be it therefore enacted by the governor, council and house of representatives, that from and after the tenth day of January next, the several precincts within this province shall have and enjoy the same power and privileges in the choosing any officer or officers where such vacancy happens in them, as towns by law are invested with.

CHAPTER CCLVIII.

AN ACT IN FURTHER ADDITION TO THE ACT FOR LIMITATION OF ACTIONS AND FOR AVOIDING SUITS IN LAW, WHERE THE MATTER IS OF LONG STANDING.

WHEREAS by a law of this province, intitled an act in further addition to the act for the limitation of actions and for avoiding suits at law where the matter is of long standing, made and passed in the twenty-fifth year of his present majesty's reign, the time limited for commencing all actions of account and upon the case, excepting such as are excepted in another act, intitled an act in addition to and for the explanation of an act, intitled an act for the limitation of actions and avoiding suits at law where the matter is of long standing, made and passed in the twenty-second year of his present majesty's reign, will expire in September next, and

whereas it is almost impracticable to have such accounts and actions settled within the time now limited by law for that purpose,

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that the time for commencing of actions of the case upon notes of hand or upon book accounts limited by the said act of the twenty-second, or by said act made in the twenty-fifth year of his present majesty's reign, shall be and is hereby extended to the last day of March, which will be in the year of our Lord one thousand seven hundred and fifty-six; and no suit hereafter to be brought in such cases shall be barred, if commenced before the expiration of said term.

Time continued for commencing actions upon the case, notes of hand and book accounts.

And that this law may be more generally known,

SECT. 2. Be it further enacted, that the clerk of every town and district within this province shall read or cause the same to be read in their respective towns and districts at their anniversary meetings in March and May annually; and the justices of the several courts of common pleas within the respective counties shall cause the same to be publickly read at the opening of their courts from time to time after the publication of this act, and until the last day of March one thousand seven hundred and fifty-six.

This act to be read in town meeting, and at the sessions of the peace.

CHAPTER CCLIX.

AN ACT FOR THE BETTER SECURING AND RENDERING MORE EFFECTUAL GRANTS AND DONATIONS TO PIOUS AND CHARITABLE USES, AND FOR THE BETTER SUPPORT AND MAINTENANCE OF MINISTERS OF THE GOSPEL, AND DEFRAYING OTHER CHARGES RELATING TO THE PUBLICK WORSHIP.

WHEREAS many grants and donations have heretofore been made by sundry well disposed persons, in and by such expressions and terms as plainly show it was the intent and expectation of such grantors and donors, that their several grants and donations should take effect so as that the estates granted, should go in succession, but doubts have arisen in what cases such donations and grants may operate, so as to go in succession, for ascertaining whereof,

SECT. 1. Be it enacted by the governor, council and house of representatives, that the deacons of all the several

Deacons and church wardens of protestant churches to take in succession grants and donations, &c.

protestant churches, not being episcopal churches, and the church wardens of the several episcopal churches, are and shall be deemed so far bodies corporate, as to take in succession all grants and donations whether real or personal, made either to their several churches, the poor of their churches, or to them and their successors, and to sue and defend in all actions touching the same; and wherever the ministers, elders or vestry, shall in such original grants or donations have been joined with such deacons or church wardens as donees or grantees in succession, in such cases such officers and their successors, together with the deacons or church wardens, shall be deemed the corporation for such purposes as aforesaid; and the minister or ministers of the several protestant churches of whatever denomination are and shall be deemed capable of taking in succession any parsonage land, or lands granted to the minister and his successors, or to the use of the ministers, and of suing and defending all actions touching the same, saving that nothing in this act shall be construed to make void any final judgment of any court of common law or judge of probate, saving also, that no alienation of any lands, belonging to churches, hereafter made by the deacons without the consent of the church, or a committee of the church for that purpose appointed, or by church wardens without the consent of the vestry, shall be sufficient to pass the same; and that no alienation, hereafter made by ministers of lands, by them held in succession, shall be valid any longer than during such alienors continuing ministers, unless such ministers be ministers of particular towns, districts or precincts, and make such alienation with the consent of such towns, districts or precincts, or unless such ministers so aliening be ministers of episcopal churches, and the same be done with the consent of the vestry; and the several churches in this province, not being episcopal churches, are hereby empowered to choose a committee, to call the deacons or other church officers to an account, and if need be, commence and prosecute any suits, touching the same, and also to advise and assist such deacons in the administration of the affairs aforesaid.

Ministers to take in succession parsonage lands, &c.

No alienation to be made without consent of the church.

Limitation of the income of church grants.

SECT. 2. And be it further enacted, that the income of the grants, made or to be made to any one such body politick for pious and charitable uses, shall not exceed the sum of three hundred pounds, per annum; and also that all such donations hereafter made by deed, which shall not be recorded in the register's office, in the county where the lands lie, three calendary months before the death of the donor, and all such bequests or devises which shall not be made before the last sickness of the person, making the same, or at least three months before the death of the testator, shall be ut-

terly void and of no effect; any thing in this act contained to the contrary notwithstanding.

And whereas the several congregations in the town of Boston, and some others under the like circumstances, are not by law enabled by vote to raise money for the support of the ministry and publick worship among them,

Pews may be taxed for the charge of the publick worship, &c.

SECT. 3. Be it further enacted, that in every such case where monies cannot be raised as aforesaid for the support of the ministry and defraying the other charges necessary for the upholding and maintaining of publick worship and repairs of the house in which the same is performed by virtue of any provision in the laws already made for that purpose, the proprietors of the pews or persons to whom they are allotted in the several houses for publick worship may, if they think fit, at a publick meeting to be called for that purpose by the proprietors, clerk, deacons or church wardens, and notice thereof immediately after divine service given ten days at least before said meeting, cause the several pews in such houses to be valued according to the convenience and situation thereof, and a new estimate to be put upon said pews from time to time, as shall be found necessary, and a tax to be laid upon each pew according to the convenience and situation thereof as aforesaid, provided the said tax shall not exceed two shillings per week on any one pew, the money so raised to be applied towards the support of the ministry and other charges necessary for maintaining publick worship or repairs of the house, and that the said proprietors may, at a meeting to be called as aforesaid, choose a clerk and treasurer, and likewise appoint some suitable persons to demand and receive the several sums so assessed of the owners of such pews, and in case of denial on such demand or neglect of payment, three months after such demand, to sell the same, and after deducting such taxes and costs, to return the surplus to the owners.

Proviso, the tax exceed not 2s. per week.

Proprietors to choose a clerk, treasurer, &c.

Provided nevertheless, that when the owner of any pew shall make a tender of the same to the proprietors or to their committee at the valuation which shall have been last put thereon, and they shall refuse or neglect to accept the same, no sum shall be deducted out of the sale of said pew, but such only as shall have become due before the making of such tender.

Proviso.

CHAPTER CCLX.

AN ACT DECLARING IN WHAT MANNER THE DECREES AND ORDERS OF THE GOVERNOR AND COUNCIL, IN CONTROVERSIES CONCERNING MARRIAGE AND DIVORCE, SHALL BE CARRIED INTO EXECUION.

WHEREAS in and by an act of this province, made and passed in the fourth year of the reign of king William and queen Mary, it is among other things enacted and declared, that all controversies concerning marriage and divorce shall be heard and determined by the governor and council, but no express provision has been made by the laws of this province for carrying the decrees and orders of the governor and council in such cases into execution,

Persons refusing to conform to any legal decree of governor and council liable to be imprisoned.

Be it therefore enacted by the governor, council and house of representatives, that if any person shall refuse or neglect to observe and conform to any legal decree or order, whether interlocutory or final, made, or that shall hereafter be made by the governor and council in any controversy concerning marriage and divorce, every such person shall be and is hereby declared liable to suffer the pains of imprisonment, and it shall and may be lawful for the secretary of the province to issue a warrant under his hand and seal by order of the governor and council, directed to any sheriff or his deputy, requiring him forthwith to arrest the body of such person so refusing or neglecting, and him to commit unto his majesty's gaol, there to remain without bail or mainprize, until he shall comply with such decree or order made as aforesaid.

CHAPTER CCLXI.

AN ACT FOR CONFIRMING THE PROCEEDINGS OF THE GENERAL ASSEMBLY CONVENED ON THE FIFTH OF SEPTEMBER, ANNO DOMINI 1755.

WHEREAS upon advices of great importance received from the troops gone upon an expedition against Crown Point, his honour the lieutenant governor and commander in chief, and

his majesty's council, judged it absolutely necessary that the general assembly, which stood prorogued to the twenty-fourth day of September instant, should be sooner convened, and the same was accordingly convened by his honour's proclamation, and held on the fifth of the same month, and from day to day continued until the ninth instant, during which time divers matters of publick importance were transacted, and whereas some doubt may possibly arise touching the legality of the proceedings of that assembly held before the time to which the same stood prorogued,

Therefore for the preventing or removing all doubts and disputes touching the same,

Be it enacted by the lieutenant governor, council and house of representatives, that all votes, orders, laws and other matters, made, passed or transacted by the general assembly convened and held on the fifth of this instant September, and which was held until the ninth day of the same, be, and they are hereby established and confirmed, and shall to all intents and purposes be deemed valid and effectual in the law, as if the great and general court or assembly had stood prorogued to the said fifth day of September, and had been then held, and the same votes, orders, laws and other matters had been passed or transacted by the said great and general court during such their session.

All proceedings of the late convention of the general court confirmed.

CHAPTER CCLXII.

AN ACT TO PREVENT FARMERS AND COLLECTORS OF THE DUTIES OF EXCISE BEING MEMBERS OF THE GENERAL COURT OR ASSEMBLY OF THIS PROVINCE.

WHEREAS many inconveniences may arise to this government by persons concerned in farming or collecting the duties of excise being members of the general court or assembly,

Be it enacted by the governor, council and house of representatives, that no person who shall either directly or indirectly be a purchaser or collector of the duties of excise laid by the act passed this present session of the general court, or which shall be laid by any future act, or who shall directly or indirectly be a sharer with any such purchaser or collector in such duties, shall be allowed to be a member of the council or house of representatives of this province during the term of his being so concerned.

Purchasers or collectors of excise not to be members of the court.

CHAPTER CCLXIII.

AN ACT IN ADDITION TO AND FOR EXPLANATION OF AN ACT, MADE IN THE FOURTH YEAR OF HIS MAJESTY'S REIGN, INTITLED AN ACT DIRECTING HOW RATES AND TAXES TO BE GRANTED BY THE GENERAL ASSEMBLY, AS ALSO COUNTY, TOWN AND PRECINCT RATES SHALL BE ASSESSED AND COLLECTED.

WHEREAS in and by an act, made in the fourth year of his present majesty's reign, intitled an act directing how rates and taxes to be granted by the general assembly, as also county, town and precinct rates shall be assessed and collected, it is among other things provided, "that two or more assessors shall have power by warrant under their hands and seals to commit to the common gaol such persons as being duly assessed shall refuse or neglect to pay the sums so assessed by the space of twelve days after demand thereof, where no sufficient distress can or may be found, whereby the same may be levied," and whereas a doubt hath arisen, whether by the assessors so empowered be meant and intended the assessors for the time being, or the assessors by whom the persons to be committed were assessed,

Assessors for the time being intended.

SECT. 1. Be it therefore enacted by the lieutenant governor, council and house of representatives, that by the assessors so empowered in and by the act aforesaid, the assessors for the time being, and they only, are meant and intended, and that the said act shall be and always ought to have been so understood.

Persons overrated, unless relieved by the assessors, may apply to the general sessions of the peace.

SECT. 2. And be it further enacted, that any person apprehending himself overrated, and applying to the assessors for the time being for relief, shall, upon their refusal to ease him, have liberty to make application to the court of general sessions of the peace, to be held within and for the same county within which the assessment was made next after such refusal, the justices of which court are hereby authorized to grant him relief in such manner as is directed in and by the act aforesaid.

SECT. 3. And be it further enacted, that the warrant for commitment, to be granted by the assessors as aforesaid, shall be in the form following,

ss. To A. B. one of the constables (collectors) of the town of C. in the county of S. Greeting:

Whereas application has been made to us the subscribers, assessors for the said town of C. by the said A. B. one of the

constables (or collectors) of said town of C. in said county, that H. I. of said town of C. is assessed to the province tax in the rate bill committed to him the said A. B. to collect as constable (collector) for the year the sum of and although the said tax has been demanded of the said H. I. yet he neglects and refuses to pay and satisfy the same, and there being no estate of the said H. I. to be found whereon to levy the same, these are therefore in his majesty's name to require you the said A. B. to take into safe custody the body of the said H. I. and him commit to the common gaol of the said county of S. there to remain until he the said H. I. shall pay and satisfy the above sums with all necessary charges, or be discharged by due course of law.

Form of the warrant of commitment to be granted by assessors.

Given under our hands and seals at C. this day of in the year of his majesty's reign, annoque Domini,

} Assessors of the town of C.

CHAPTER CCLXIV.

AN ACT FOR FURTHER REGULATING THE COURSE OF JUDICIAL PROCEEDINGS.

WHEREAS trials of civil actions upon appeals and reviews have been unnecessarily multiplied, to the great charge and grievance of many of his majesty's subjects within this province,

Be it therefore enacted by the lieutenant governor, council and house of representatives, that no writ of review shall hereafter be brought to any inferiour court of common pleas; and that whensoever in any action that now is depending or shall hereafter be brought in any of the courts within this province, the party, whether plaintiff or defendant, which shall have recovered judgment on the first trial, shall likewise recover on a second trial, no review shall be allowed in such action.

CHAPTER CCLXV.

AN ACT IN ADDITION TO AN ACT, MADE AND PASSED IN THE FIFTH YEAR OF THE REIGN OF THEIR LATE MAJESTIES WILLIAM AND MARY, INTITLED AN ACT FOR HIGHWAYS.

WHEREAS in and by an act, made and passed in the fifth year of the reign of their late majesties king William and queen Mary, intitled an act for highways, it is provided, that where highways or common roads are wanting, or where old ways may with more conveniency be turned or altered, upon application made to the justices in quarter sessions in the county where they are wanted, they having first by a committee inquired into the necessity and conveniency thereof, the said justices are to order the same to be laid out or altered by a jury to be summoned by the sheriff for the said purpose, which method is found inconvenient, and causes great and needless charge to the respective counties in this province, for remedy whereof,

Court of sessions to appoint a committee to lay out or alter highways.

SECT. 1. Be it enacted by the lieutenant governor, council and house of representatives, that where a new highway or common road from town to town or place to place shall be wanting, or where a highway or common road already laid out, stated and established, may or can with greater convenience be turned or altered, upon application made to the justices of the court of general sessions of the peace within the same county, and it being judged by them to be of common convenience or necessity to have such new way laid out or old one altered, the said court be and hereby are empowered to appoint a committee of five disinterested sufficient freeholders in the same county to view and lay out such highway or road, which committee shall give seasonable notice to all persons interested of the time and place of their meeting, and shall be under oath to perform the said service, according to their best skill and judgment, with most convenience to the publick, and least prejudice or damage to private property, and shall also ascertain the place and course of said road in the best way and manner they can, which having done, the said committee or the major part of them shall make return thereof to the next court of general sessions of the peace to be held in the said county after the said service is performed, under their hands and seals, to the end the same may be allowed and recorded, and after known for a publick highway.

Return to be made to said court.

Proviso.

Provided nevertheless, that if any person be damaged in his property by the laying out or altering such highway, the

town or district where the same is shall make such person or persons reasonable satisfaction, according to the estimation of the committee or major part of them who laid out the same, which said committee are empowered and required under oath to estimate the same, and make return thereof as aforesaid; and if such person or persons so damaged find him or themselves aggrieved by any act or thing done by the said committee in laying out said way or estimate of his or their damages, he or they may apply unto the court of general sessions of the peace, provided such application be made to the court that shall be held in said county next after such return; and said court is hereby empowered to hear and determine the same, and shall and may inquire by a jury under oath, to be summoned by the sheriff or his deputy for said purpose, if the person complaining desires the same, and if the jury shall not alter said way, or increase the damages, the person complaining shall be at all costs, to be taxed against him by said court, otherwise such cost shall be paid by the county, and the increase of damage found by the jury shall be paid by the town or district in which such way shall be laid.

Jury's verdict to determine damage, and fix highways.

SECT. 2. And be it further enacted, that the verdict of such jury, return thereof being made under their hands and seals to said court, shall conclude the person or persons complaining with regard to the damage, and also fix and determine the place of such road or highway, and record shall be made thereof accordingly.

CHAPTER CCLXVI.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT IN ADDITION TO THE ACT FOR PROVIDING OF POUNDS, &c.

WHEREAS it has been found inconvenient for the party damnified by any creatures, which have been impounded and appraised, to be obliged to keep them to his own use at the appraised value,

Creatures impounded and appraised may be sold at publick outcry.

Be it therefore enacted by the governor, council and house of representatives, that when any creatures have been impounded and appraised agreeably to the directions of the aforementioned act, if the person impounding do not see fit to take the said creatures at the appraised value, then they shall be sold at publick outcry to the highest bidder by the person who caused the same to be impounded, notice of the

time and place of such sale having been posted up in some publick place, in the town in which they are impounded, four days at least before the sale, and the overplus of the money arising, by such sale if any there be after necessary charges are paid, shall be returned to the owner.

CHAPTER CCLXVII.

AN ACT TO ENABLE CREDITORS TO RECEIVE THEIR JUST DEBTS OUT OF THE EFFECTS OF THEIR ABSENT OR ABSCONDING DEBTORS.

For the better preventing of frauds and deceit too often designed and practised by ill-minded debtors in betrusting and depositing their goods and effects in the hands of others, with intent to reserve and secure them to their own use and defeat their creditors of their just dues, absconding or withdrawing themselves out of this province, or not being within this province, or to be come at, and their goods and effects concealed so as they cannot be attached and made liable to the payment of their creditors by the ordinary process of law,

Goods and effects of absconding debtors to be attached.

Sect. 1. Be it enacted by the governor, council and house of representatives, that it shall and may be lawful for any person intitled to any action of debt, detinue, account, covenant or case, in trover, indebitatus assumsit, or on express contract against any person absconding or absent out of this province, to cause the goods and estate of such absconding or absent person to be attached in whose hands or possession soever the same are or may be found; and the attaching of any part thereof shall secure and make the whole that is in such person's hands liable in the law to respond the judgment to be recovered upon such process, if so much there be, and no further, and shall be subjected to be taken in execution for satisfaction thereof, or so far as the value thereof will extend, and the person in whose hands they are shall expose them accordingly.

And subject to execution.

Agent, &c. of an absent debtor to be summoned to court in case no

Sect. 2. And be it further enacted, that where no goods or effects of such absent or absconding person in the hands of his attorney, factor, agent or trustee, shall be exposed to view, or can be come at so as to be attached, it shall and may be lawful to and for any person intitled to any of the aforesaid actions to file a declaration against such absent or

absconding person in the clerk's office of the inferiour court of common pleas in the same county where such factor, agent or trustee lives, therein particularly setting forth his debt and damage, how and for what cause it arises, and to cause the attorney, factor, agent or trustee of such absent or absconding person to be served with a summons out of the office, annexed to the said declaration, fourteen days before the sitting of the court, for his appearance at such court, which being duly served, and return thereof made under the officer's hand, shall be sufficient in the law to bring forward a trial without other or further summons, unless the principal be an inhabitant or hath for some time had his residence within this province, in which case a like summons, with an attested copy of the declaration annexed, shall also be left at his dwelling house, lodging or place of his last and usual abode fourteen days before the sitting of the court; and such attorney, factor, agent or trustee, upon his desire, shall be admitted to defend the suit on behalf of his principal throughout the course of the law, and an imparlance shall be granted of course at two terms successively, that he may have an opportunity to notify his principal thereof, and at the third term without special matter alleged and allowed in bar, abatement or further continuance, the cause shall peremptorily come to trial, and if judgment be rendered for the plaintiff, all the goods, effects or credits of such absent or absconding person in the hands of such attorney, factor, agent or trustee, which were in his hands at the time of his being served with the summons and declaration aforesaid, to the value of such judgment, if so much there be, shall be liable and subjected to the execution granted upon such judgment for or towards satisfying the same, and from the time of serving the summons as aforesaid, shall be liable and secured in the law in his hands to answer the same, and may not be otherwise disposed of or converted.

effects appear.

Trial thereupon to be had.

Two imparlances to be granted.

Goods in such agent's hands subject to execution on a judgment.

Sect. 3. Provided nevertheless, and be it enacted, that if upon summons being served as aforesaid, the supposed attorney, factor, agent or trustee shall come into court at the first term, and declare that he had not in his hands at the time of the service of such summons any goods, effects or credits whatsoever of the absent or absconding person, and shall submit to an examination upon oath respecting the same, and if upon such examination it shall appear to the satisfaction of the justices of the court that he had not any goods, effects or credits whatsoever of the absent or absconding person in his hands at the time of his being summoned as aforesaid, then in every such case the plaintiff shall become nonsuit, and shall pay to him who was summoned as attorney, factor, agent or trustee, his reasonable costs, to be taxed in common form by the justices of the court.

Proviso.

Agents not appearing at the first term, &c. liable to pay costs.

Sect. 4. And be it further enacted, that if any attorney, factor, agent or trustee, being served with summons and declaration as aforesaid, shall not appear at the first term, and then either acknowledge himself to have had in his hands some goods, effects or credits of the absent or absconding person at the time of the service aforesaid, and thereupon pray that he may be admitted to defend the action, or otherwise submit himself to an examination upon oath as aforesaid, he shall be liable to pay to the plaintiff all such costs as shall arise upon his suit, to be taxed by the justices of the court before which the action shall be brought.

Execution to be levied on agent's proper goods and estate, in case.

Sect. 5. And be it further enacted, that in case any attorney, factor, agent or trustee, from and after the time of his being served with summons and declaration as aforesaid against his principal, being an absent or absconding person, shall transfer, remit, dispose of or convert any of the goods, effects or credits of such absent or absconding person in his hands at the time of such service, so that there shall not be sufficient to satisfy the judgment, the debt being afterwards ascertained by judgment of court, or that shall not discover, expose and subject the goods, effects or credits of such absent or absconding person in his hands to be taken in execution for or towards the satisfaction of the judgment, so far as what were in his hands at the time of said service will extend, shall be liable to satisfy the same of his own proper goods and estate, and as of his own debt; and a writ of scire facias may be taken out of the same court and served upon him as the law directs, to appear and shew cause, if any he have, to the contrary, where, upon default of appearance or refusal to disclose upon his oath (which oath the justices of such court are empowered to administer) what goods, effects or credits of the absent or absconding person are in his hands, and to what value, then judgment shall be entered up against him of his own proper goods and estate, and execution be awarded accordingly.

Agent to be put on oath.

Proviso.

Sect. 6. Provided nevertheless, and be it enacted, that if it shall appear that the attorney, factor, agent or trustee so summoned as aforesaid, and having in his hands at the time of such summons any goods, effects or credits of the absent or absconding person, hath not any ways remitted, disposed of or any ways converted the same after the summons being served on him as aforesaid, but that he hath discovered, exposed and subjected them to be taken in execution to satisfy the judgment recovered against the absent or absconding person as aforesaid, then the party who commenced the suit shall pay such attorney, agent, factor or trustee his reasonable costs, to be taxed in common form by the justices of the court from which the scire facias issued as aforesaid.

SECT. 7. And be it further enacted, that the goods, effects or credits of any absent or absconding person so taken as aforesaid by process and judgment of law out of the hands of his attorney, factor, agent or trustee, by any of his creditors, shall fully acquit and for ever discharge such attorney, factor, agent or trustee, his executors or administrators, of, from and against all actions and suits, damages, payments and demands whatsoever, to be asked, commenced, had, claimed or brought by his principal, his executors or administrators, of and for the same; and if any attorney, factor, agent or trustee shall be molested, troubled or sued by his principal for any thing by him done in pursuance of this act, he may plead the general issue, and give this act in evidence. Agent to be acquitted and discharged.

Provided nevertheless, that any absconding or absent person, against whom judgment shall be recovered as aforesaid, shall be intitled to a review of the same at any time within three years after such recovery. Proviso.

CHAPTER CCLXVIII.

AN ACT TO PREVENT A MULTIPLICITY OF LAWSUITS.

WHEREAS of late it hath been the practice of some of the sheriffs, under-sheriffs, or their deputies, within this province, to receive from some of the justices of the peace and the clerks of the courts within the respective counties blank writs, and then fill them up and serve them, and sometimes appear by virtue of a power of attorney to pursue the same, which practice has a tendency very much to increase the number of lawsuits, and to a partial administration of justice, for remedy whereof,

SECT. 1. Be it enacted by the governor, council and house of representatives, that no sheriff, under-sheriff or deputy-sheriff within this province, from and after the tenth day of February one thousand seven hundred and fifty-nine, shall presume to draw or fill up any writ for any matter or thing whatsoever, triable before any of his majesty's justices of the peace or courts of record within this province, or be any ways of advice or assistance therein, unless in cases where he or they are concerned as plaintiff; and in case it appears to the justice or court to whom such writ is returned, that any writ was so drawn or filled up as aforesaid, such justice No sheriff, &c. to presume to fill any writ or give advice and assistance except in certain cases.

or court shall dismiss the same, and allow costs for the defendant.

No sheriff, &c. to appear as an attorney, &c.

SECT. 2. And be it further enacted, that no appearance of any sheriff, his under sheriff or deputy, before any justice of the peace or court of record, by virtue of a power of attorney, shall be allowed good to any intent or purpose whatsoever, in the county where he is an officer, except where the party giving the power lives out of the province, and in this case his appearance shall not be allowed, if he filled the writ.

CHAPTER CCLXIX.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT FOR REGULATING OF FENCES, CATTLE, &c.

Proprietors of lands agreeing to improve the same in one common inclosure, empowered to make rules for the improvement of the same, &c.

BE it enacted by the governor, council and house of representatives, that when and so often as the proprietors of certain tracts of land so situated as that they have or do agree to improve the same in one common inclosure, they shall have it in their power by a major vote of the said proprietors legally met, the votes to be reckoned according to the interest of each voter, to make such rules relating to the securing and improvement of the same as they shall think just and equitable; and for that end said proprietors shall annually meet together some time in the month of May this year, and in the month of March in future years during the continuance of this act; and for the calling said meetings, any one of the proprietors of such tracts of land may apply to a justice of the peace by a request in writing under his hand, setting forth the ends and business of such meeting, such justice is hereby required and authorized to issue a warrant to said proprietor, directing him to post up a notification in writing in some publick place in the town where said land lays fourteen days before the time appointed for said meeting, setting forth the time, place, ends and purposes of said meeting, which shall be a legal warning; and all votes passed by the proprietors then present relative to the matters and things contained in said notification and entered in a book by the proprietor that called the meeting, he being under oath for that purpose, shall be binding upon all the proprietors.

Proviso.

Provided nevertheless, that when and so often as one or two men shall own the greater part of the lands inclosed, as above expressed, and he or they shall pass such vote or votes

at any meeting as the minor part of said proprietors do not agree to, the said minor part of said proprietors may apply to two justices of the peace, quorum unus, within the county in which such land lies for process, which justices are hereby authorized to issue a writ of summon directed to the proprietor or proprietors who passed such vote or votes requiring him or them to appear before the said justices fourteen days after the date of said summon; and the said justices are hereby authorized and empowered to hear, examine, and enter final judgment concerning the matter in controversy, and award a writ of execution upon such judgment returnable to them in thirty days from the date thereof; and in case any of the proprietors shall neglect seasonably and sufficiently to make up his part of fence, he shall be liable to the penalty by law provided to enforce the proprietors of common fields to make and maintain their fences; and in case any proprietor turn stock into said inclosure before the day agreed upon by the vote of the proprietors, or shall after that day turn in more stock than his proportion, he shall be deemed a trespasser, and his creatures so put in shall be proceeded with by any of the proprietors as creatures taken damage feasant to all intents and purposes, as much as though he owned no lands in said inclosure; any law, usage or custom to the contrary notwithstanding.

CHAPTER CCLXX.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED OR NEAR EXPIRING.

WHEREAS the several acts herein after mentioned, which are now expired or near expiring, have been found useful and beneficial, namely, one act, made in the thirteenth year of his present majesty's reign, intitled an act in addition to the several laws of this province relating to common roads and private ways, and one act, made in the twenty-sixth year of his present majesty's reign, intitled an act for further regulating the proceedings of the court of probate within this province,

Be it therefore enacted by the governor, council and house of representatives, that the first mentioned act, which is near expiring, be, and hereby is continued; and that the last mentioned act, which is expired, with all and every

article, clause, matter and thing therein contained, be and hereby is revived, and that the said acts shall be in force until the tenth day of June, in the year of our Lord one thousand seven hundred and sixty-six, and no longer.

CHAPTER CCLXXI.

AN ACT IN ADDITION TO AN ACT, RELATING TO EXECUTORS AND ADMINISTRATORS.

WHEREAS some doubts and questions have arisen upon the construction of some parts of an act, intitled an act relating to executors and administrators, whether by force of the same real estates of the testators and intestates may be taken in execution for the satisfaction of the judgments recovered against their estate in the hands of their executors and administrators, and in what manner the same should be levied, and whether executors and administrators, who by neglecting to raise money out of the assets by sales of personal estate or real estate, if need be, shall subject the estates of their testators or intestates to the cost and loss that must attend such a method of paying debts, shall be deemed guilty of waste or breach of trust,

Estates of testators and intestates liable to execution, &c.

SECT. 1. Be it enacted by the governor, council and house of representatives, that the real estates of any testators or intestates are and shall be liable to be taken and levied upon by any execution issuing upon judgments recovered against executors or administrators in such capacity, being the proper debts of the testators or intestates, and that the method of levying, appraising, recording and right of redemption, shall be the same as by law is provided respecting other real estates levied upon and taken in execution.

Neglect of executors and administrators deemed waste, &c.

SECT. 2. And be it further enacted, that when any executor or administrator shall neglect or unreasonably delay to raise money out of his testator's or intestate's estate, by collecting the debts due to the estate, and selling the personal estate, or the real estate, if need be, and he has power or can obtain leave to sell the same, or shall neglect to pay what he has in his hands, and by such neglect or delay shall subject his testator's or intestate's real or personal estate to be taken in execution, the same shall be deemed waste in him and unfaithful administration.

And whereas it sometimes may happen that the estate taken by execution as aforesaid, or sold by virtue of a license from the superiour court, has been specially devised by the testator to one or more persons, who by means of such levying or sale may be deprived of his or their legacy or devise, therefore,

Real estate or chattels of testators taken in execution, to be borne proportionably among the legatees.

SECT. 3. Be it further enacted, that whenever any testator in and by his last will and testament hath given or shall give any chattels or real estate to any person or persons, and the same hath been or shall be taken in execution in manner aforesaid, or sold by order of the superiour court, in such case all the other legatees, devisees or heirs, shall refund their average or proportionable part of such loss to such person or persons from whom the bequest shall be so taken away, and he or they shall and may maintain a suit or action to compel such contribution.

CHAPTER CCLXXII.

AN ACT IN FURTHER ADDITION TO AN ACT, INTITLED AN ACT FOR THE SETTLEMENT AND SUPPORT OF MINISTERS AND SCHOOLMASTERS.

WHEREAS, in and by an act made and passed in the fourth year of the reign of king William and queen Mary, intitled an act for the settlement and support of ministers and schoolmasters, it is among other things enacted, "that the inhabitants of each town within this province shall take due care from time to time to be provided of an able, learned, orthodox minister or ministers of good conversation to dispense the word of God to them, which minister or ministers shall be suitably encouraged and sufficiently supported and maintained by the inhabitants of such town,"

And whereas, notwithstanding the provision aforesaid, some towns, districts, precincts or parishes within this province have chosen to, and settled in the work of the ministry, ignorant and illiterate persons, by means whereof the validity of the assessments made for the support of such persons has been disputed, and the peace and good order of such towns, districts, precincts and parishes have been greatly disturbed, for prevention whereof for the future,

Be it enacted by the governor, council and house of representatives, that it shall not be lawful for any town, district, precinct or parish to assess the inhabitants thereof

Towns, &c. not to be assessed towards the support of illiterate ministers, unless.

for or towards the support or maintenance of any person, who shall be hereafter called to or settled in the work of the gospel ministry in such town, district, precinct or parish, unless such person shall have been educated at some university, college or publick academy for the instruction of youth in the learned languages, and in the arts and sciences, or shall have received a degree from some university, college, or such publick academy, or shall have obtained testimonials under the hands of the major part of the settled ministers of the gospel in the county where such town, district, precinct or parish shall lie, that they apprehend him, the said person being a candidate for the gospel ministry, to be of sufficient learning to qualify him for the work of such ministry, and all assessments contrary to this act shall be void and have no effect.

CHAPTER CCLXXIII.

AN ACT IN FURTHER ADDITION TO THE ACT FOR LIMITATION OF ACTIONS, AND FOR AVOIDING SUITS IN LAW WHERE THE MATTER IS OF LONG STANDING.

WHEREAS by a law of this province, intitled an act in further addition to the act for limitation of actions, and for avoiding suits in law where the matter is of long standing, made and passed in the thirty-first year of his present majesty's reign, the time limited for commencing all actions of account and upon the case, excepting such as are excepted in another act, intitled an act in addition to and for the explanation of an act, intitled an act for limitation of actions, and avoiding suits at law where the matter is of long standing, made and passed in the twenty-second year of his present majesty's reign, will expire the last day of March next, and whereas the continuance of the war, and great numbers of men that are and may hereafter be in his majesty's service, will make it necessary that some further time may be allowed for the bringing some kind of actions,

Time for bringing actions of the case to be extended.

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that the time for commencing of actions of the case upon notes of hand, or upon book accounts, limited by said act of the twenty-second, or by said act of the thirty-first year of his present majesty's reign, shall be and is hereby extended to the last day of March, which will be in the year of our Lord one thousand seven

hundred and sixty-three, and no suit, hereafter to be brought in such cases, shall be barred, if commenced before the expiration of said term.

And that this law may be more generally known,

SECT. 2. Be it further enacted, that the act, intitled an act for the limitation of actions, and for avoiding suits in law where the matter is of long standing, made in the thirteenth year of the present reign, the aforesaid act, intitled an act in addition to and for the explanation of an act, intitled an act for the limitation of actions, and avoiding suits at law where the matter is of long standing, made and passed in the twenty-second year of the present reign, and this act shall be read by the clerk of each town and district, at their anniversary meetings in March and May annually; and the justices of the several courts of common pleas within the respective counties shall cause the same to be publickly read at the opening of their courts, from time to time from the publication of this act, and until the last day of March, one thousand seven hundred and sixty-three.

This act to be read in towns and districts.

CHAPTER CCLXXIV.

AN ACT RELATING TO FERRIES.

WHEREAS there are several places within this province where country roads heretofore have been, or hereafter may be laid over rivers which are not fordable, some of them the whole year, others part of the year, and where bridges cannot be erected without great cost and charge, and no persons will undertake to keep ferries at said places, by which means travellers and other persons are greatly interrupted in their business, for remedy whereof,

SECT. 1. Be it enacted by the governor, council and house of representatives, that the several towns and districts within this province where, in the judgment of the quarter sessions, it is necessary to set up ferries as aforesaid, said towns and districts shall take effectual care to provide a suitable person or persons to keep and attend said ferries, at such times in the year as it may be necessary, which persons shall be licensed by the justices in quarter sessions, said persons to give bond for the faithful discharge of their place; and all such ferrymen are hereby enjoined to keep a good boat or boats in good repair, suitable to the waters they are to ferry over, also give due attendance on passengers, on penalty of

Towns to provide persons to keep and attend ferries.

Penalty for default.

five shillings for every default of non-attendance, and for want of a good boat to be kept in repair, to pay five pounds; and the fares of the respective ferries to be settled by said courts, having regard to the difficulty of maintaining the same.

Towns and districts further empowered relating to ferries, as the sessions shall order.

SECT. 2. Be it further enacted, that if any such ferry may be necessary across any river where one town or district join said river on one side, and another town or district on the other side, in such case the said towns and districts shall either jointly or alternately provide such person or persons to keep such ferry as said court shall order.

Penalty for towns and districts that shall neglect. How fines are to be disposed of.

SECT. 3. Be it further enacted, that the several towns and districts that shall neglect or refuse to provide suitable persons to keep ferries as aforesaid shall forfeit and pay the sum of ten pounds per month, for each month's neglect; all fines and forfeitures arising by this act shall be one moiety thereof to him or them that shall inform or sue for the same, the other moiety to be paid into the province treasury, to be recovered in any court proper to try the same.

CHAPTER CCLXXV.

AN ACT FOR THE BETTER REGULATING THE CHOICE OF PETIT JURORS.

Selectmen of each town to take a list of persons liable to serve as petit jurors &c. and lay the same before their towns, at a meeting called for that purpose.

SECT. 1. BE it enacted by the governor, council and house of representatives, that the selectmen of each town within this province shall within their respective towns, sometime before the tenth day of April next, take a list of the persons liable by law, and which they shall judge able and well qualified to serve on the petit juries, and lay the same before the town at a meeting in May next, to be called for that purpose; and the towns shall respectively at such meeting select out of the list one quarter of the number so laid before them, such as they judge most suitable to serve as jurors at the superiour court of judicature, court of assize and general gaol delivery, and put their names written on separate pieces of paper in one box, and the remainder of such of them as the town shall think suitable in the same manner into another box, to serve as jurors in the inferiour court of common pleas and court of general sessions of the peace, to be provided by the selectmen for that purpose, and deliver the same to the town clerk, to be by him kept under lock and key.

SECT. 2. And be it further enacted, that when at any time after the first day of June next, during the continuance of this act, any venire facias shall issue forth for the choice of petit jurors, and the inhabitants of each town shall be assembled for that purpose, the town clerk, or one or more of the selectmen, in case of his absence or sickness, shall carry into the meeting the box, wherein the names of those persons are put who are designed to serve at the court from whence the venire facias issued, which shall be unlocked in the meeting, and in the presence of the major part of the selectmen, who are hereby enjoined to be present, and the constable who shall warn said meeting shall particularly notify them and the town clerk for that purpose; and the town clerk, or in his absence one or more of the selectmen shall draw out so many tickets as there are jurors required by the venire, who shall be the persons that shall be returned to serve as jurors, saving, that if any whose names are so drawn are sick or otherwise unable to serve at that time in the judgment of the town, their names shall be returned into the box, and others drawn in their stead.

Said list to be carried into the meeting, and as many names drawn out by the town clerk or selectmen as there shall be occasion for.

And to the intent the same persons may not serve too often, the clerk or selectmen who shall draw the ticket or name of any person, returned to serve as aforesaid, shall enter on the back thereof the date of such draft, and return the same into the box again, and said person or persons shall not be obliged, although drawn at any time, to serve as jurors oftener than once in three years, and no person who has served as a petit juror within two years past shall be obliged to serve again until three years be completed from the time of his last serving, notwithstanding his name's being drawn as aforesaid; and the selectmen shall in the same manner once in every year during the continuance of this act take a new list of such other persons as may become suitable and qualified, and lay the same before the town, whose names being first by them allowed shall be put into their respective boxes in manner as aforesaid; and as well that all may do duty, as that the deficiency that may have happened by death or otherwise may be supplied at such time, the town may, if they think fit, make a new regulation of the list before received, and transfer the names from one box to another, as they judge needful.

Persons to serve on juries but once in three years.

And whereas it often happens that the persons returned to serve as petit jurors abscond, and the respective constables are put to great difficulty, and frequently prevented from notifying them,

SECT. 3. Be it further enacted, that from and after the first day of June next, and during the continuance of this act, the clerks of the respective courts in this province shall and hereby are obliged to issue out their venires from their respective offices thirty days at least before the return day,

Rules for notification and issuing venires.

and the respective constables upon receipt of the said venires are hereby obliged to notify their towns thereof, so that the several meetings may be held six days at least before the sitting of the court from whence the venire issues; and the constables are hereby directed, in case they cannot personally notify those who are so drawn, upon their leaving a certificate of their being drawn as aforesaid, with the time and place of their respective courts' sitting, at the usual place of such person's abode, four days before the sitting thereof, and it shall be deemed a sufficient notification; and if any person drawn and notified as aforesaid shall neglect to attend and serve accordingly, unless reasonable excuse be made to the justices of the respective courts, he shall be fined in a sum not exceeding thirty shillings, and if such jurors belong to the town of Boston, they shall be fined in a sum not exceeding ten pounds for the superiour court only, to be divided between the petit jurors drawn as aforesaid, and serving at such court.

Penalty for persons not attending as jurors.

Sect. 4. And be it further enacted, that the justices of the respective courts aforesaid are hereby directed, upon motion from either party in any cause that shall be tried after the first day of June next, and during the continuance of this act, to put any juror to answer upon oath, whether returned as aforesaid or as talesman, "whether he doth expect to gain or lose by the issue of the cause then depending? Whether he is any way related to either party, or hath directly or indirectly given his opinion, or is sensible of any prejudice in the cause?" and if it shall then appear to said court that such juror does not stand indifferent in said cause, he shall be set aside from the trial of that cause, and another appointed in his stead.

Method for preventing partial jurors.

And whereas it frequently happens that many of the jurors so chosen to serve in the several courts of judicature within this province fail of attendance, and by reason of challenges made by parties to several of said jurors, the number of returned jurors are too few to serve at said court, for remedy whereof,

Sect. 5. Be it enacted, that from and after the first day of June next, and during the continuance of this act, it shall and may be lawful for the justices of the courts aforesaid, when sitting, and as they shall judge there is occasion, to cause new writs of venire facias to be forthwith issued out and directed to the constables of the several towns in the county in which said court is held, for the appointment and return of so many good and lawful men to serve upon the jury at said court as shall be directed in the writ, which jurors shall be forthwith appointed, and being notified and returned to the said court, shall be and hereby are obliged to give their attendance immediately, under the penalty by this act provided for non-appearance of jurors.

New venires to be issued, in case.

And whereas, notwithstanding the expiration of the time limited for continuing an act made and passed in the thirtieth year of his majesty's reign, intitled an act for the better regulating the choice of petit jurors, sundry towns have conformed themselves thereto,

SECT. 6. Be it enacted, that the choices and returns of petit jurors already made or which hereafter may be made before the commencement of this act by such towns in conformity to the act made and passed in the thirtieth year of his majesty's reign, and the verdicts given by such jurors upon causes to them committed, together with all processes and judgments already had and entered thereupon in any court or courts of law, or which hereafter may be, are hereby held and adjudged good and valid, and are hereby confirmed, notwithstanding the discontinuance of the said act made and passed in the thirtieth year of said reign.

Choice and return, &c. made in conformity to the act of the 30th year of the present reign, to be good and valid.

CHAPTER CCLXXVI.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED AND NEAR EXPIRING.

WHEREAS the several acts herein after mentioned, which are now expired or near expiring, have been found useful and beneficial, viz. an act made in the fourteenth year of his present majesty's reign, intitled an act for explanation of and supplement to the act referring to the poor, &c., two acts made in the sixteenth year of his present majesty's reign, one intitled an act to prevent gaming for money or other gain, the other intitled an act to prevent unnecessary lawsuits, an act made in the eighteenth year of his present majesty's reign, intitled an act to prevent unnecessary expense in suits at law, three acts made in the twentieth year of his present majesty's reign, one intitled an act in further addition to an act for highways, another intitled an act more effectually to prevent profane cursing and swearing, the other intitled an act to enable the proprietors of private ways to repair them in an equal manner,

Be it therefore enacted by the governor, council and house of representatives, that such of the before mentioned acts as are expired, with all and every article, clause, matter and thing therein respectively contained, be and hereby are revived, and shall be in force from the twenty-ninth day of March one thousand seven hundred and sixty, to the twenty-

ninth day of March one thousand seven hundred and seventy; and such of said acts as are near expiring are hereby continued, and shall be in force till the said twenty-ninth day of March one thousand seven hundred and seventy, and no longer.

CHAPTER CCLXXVII.

AN ACT FOR FURTHER REGULATING THE PARTITION OF REAL ESTATES.

WHEREAS the justices of the superiour court in certain cases, and the judges of probate in certain cases, are by law empowered to appoint five freeholders to make partition of real estates, and whereas it is found unnecessary for so great a number to be appointed where the estate to be divided is but of small value,

Justices of the superiour court and judges of probate respectively to appoint freeholders to make partition of real estates.

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that for the future it shall and may be lawful for the justices of the superiour court and judges of probate respectively to appoint either three freeholders or five to make partition of real estates, according to the circumstances of the estate to be divided, and as such justices or judges of probate in their discretion shall think proper.

And whereas it sometimes happens that the estate to be divided consists of such distinct tenements, and under such peculiar circumstances as that an exact partition thereof cannot be made to each of the parties according to his share in the whole estate, without making such fractional division of a messuage, tract of land or other tenement as would be extremely prejudicial to the interested therein, for prevention whereof,

Where lands, &c. cannot be subdivided, may be settled on one of the parties not being a minor.

SECT. 2. Be it further enacted, that when any messuage, tract of land or other tenement shall be of greater value than either party's purpart or share in the estate to be divided, and cannot at the same time be subdivided, or part thereof assigned to one and part to another, without great inconvenience, the same may be settled on one of the parties not being a minor, he paying for owelty of partition, or to make a just and equitable partition, such sum or sums to such party or parties as by means thereof have less than their share of the real estate, as said dividers shall award, and the part so assigned shall stand charged for the payment thereof.

CHAPTER CCLXXVIII.

AN ACT FOR ERECTING AND ESTABLISHING TWO NEW COUNTIES IN THE EASTERLY PART OF THE COUNTY OF YORK.

WHEREAS the great extent of the county of York makes it convenient that two new counties should be erected and established in the easterly part thereof,

SECT. 1. Be it enacted by the lieutenant governor, council and house of representatives, that the county of York aforesaid shall be, and it hereby is declared to be bounded on the east by a line to run from the sea northwesterly upon the easterly line of the township of Biddeford as far as Narragansett number one, from thence northeasterly on said Narragansett to the easternmost corner thereof, from thence northwesterly on said Narragansett to the northernmost corner thereof, from thence southwesterly on said Narragansett to Saco river, from thence up said Saco river as far as Pearsontown extends thereon, and from thence to run north two degrees west on a true course as far as the utmost northern limits of this province, all the other boundary lines of said county to remain the same as heretofore.

County of York, how bounded.

SECT. 2. And be it further enacted, that the westernmost of the two new counties aforesaid shall be, and it is hereby declared to be bounded on the west by the easterly line of the county of York above described, on the north by the utmost northern limits of this province, on the southeast by the sea or western ocean and by Casco bay, from the easterly point of which bay, viz. from Smallpoint the line shall run northwesterly upon said Casco bay to New Meadows creek or river, and up said creek or river as far as Stevens' carrying place at the head of said creek or river, thence across said carrying place to Merry-Meeting bay and Androscoggin river, from thence it shall run up said Androscoggin river thirty miles, and from thence north two degrees west on a true course to the utmost northern limits of this province, including all the islands in Casco bay aforesaid, and on the seacoast of the said new county; and all the towns, districts and lands within the said bounds, together with the islands aforesaid, shall, from and after the first day of November one thousand seven hundred and sixty, be and remain one entire and distinct county by the name of Cumberland, of which Falmouth shall be the shire or county town; and the inhabitants of said county of Cumberland shall have, use, exercise and enjoy all such powers, privileges and immunities as by law the inhabitants of any

New county of Cumberland, how bounded.

other county within this province have, use, exercise and enjoy.

Inferiour courts to be held at Falmouth.

SECT. 3. And be it further enacted, that there shall be held and kept within the said county of Cumberland a court of general sessions of the peace, and an inferiour court of common pleas, to sit at Falmouth aforesaid on the first Tuesdays of May and September yearly and in every year, until this court shall otherwise order.

Superiour court to be held at Falmouth.

Also, that there shall be held and kept at Falmouth aforesaid, until this court shall otherwise order, a superiour court of judicature, court of assize and general gaol delivery, to sit on the fourth Tuesday of June yearly and every year; and the justices of the said court of general sessions of the peace, inferiour court of common pleas, superiour court of judicature, court of assize and general gaol delivery respectively, who are or shall be thereunto lawfully commissioned and appointed, shall have, hold, use, exercise and enjoy all and singular the powers which are by law already given and granted unto them within any other county of this province, where a court of general sessions of the peace, inferiour court of common pleas, superiour court of judicature, court of assize and general gaol delivery are already established.

Justices of the court of sessions at their first meeting to appoint a register of deeds.

SECT. 4. And be it further enacted, that the justices of the court of general sessions of the peace, at their first meeting in the said county of Cumberland, shall have full power and authority to appoint some fit person within the said county of Cumberland to be register of deeds and conveyances within the same, who shall be sworn to the faithful discharge of his trust in the said office, and shall continue to hold and exercise the same according to the directions of the law, until some person be elected by the freeholders of the said county of Cumberland, who are hereby empowered to choose such person at their first March meeting within their respective towns and districts in the method already by law prescribed, which person taking upon him that trust shall be sworn to the faithful discharge thereof; and until such register shall be so appointed by the said justices and sworn, all deeds and conveyances of land lying within any part of the said county of Cumberland, being recorded in the register's office of the county of York aforesaid, shall be held good and valid to all intents and purposes, so far as relates to the record of them.

Register and other officers to be afterwards chosen as in other counties.

SECT. 5. And be it further enacted, that the method and proceedings directed to by law for the choosing a register of deeds and conveyances and a county treasurer, which last mentioned office shall be chosen and appointed in manner as the law directs at the next March meeting of the freeholders aforesaid, also for the bringing forward and trying any actions, causes, pleas or suits both civil and criminal in the

several counties of this province, and courts of judicature within the same, and for choosing of jurors to serve at the several courts of justice, shall be observed and put in practice within the said county of Cumberland, and by the courts of justice within the same, any law, usage or custom to the contrary notwithstanding.

New county of Lincoln.

SECT. 6. And be it further enacted, that the most eastern county shall be bounded in the following manner, that is to say, on the west by the county of Cumberland aforesaid, on the east by the province of Nova Scotia, on the south and southeast by the sea or western ocean, and on the north by the utmost northern limits of this province, including all the islands to the eastward of the county of Cumberland aforesaid; and all the towns, districts and lands within said bounds, together with the islands aforesaid, shall, from and after the first day of November one thousand seven hundred and sixty, be and remain one entire and distinct county by the name of Lincoln, of which Pownalborough shall be the shire or county town; and the inhabitants of the said county of Lincoln shall have, use, exercise and enjoy all such powers, privileges and immunities as by law the inhabitants of any other county within this province have, use, exercise and enjoy.

Inferiour court to be held at Pownalborough.

SECT. 7. And be it further enacted, that there shall be held and kept within the said county of Lincoln a court of general sessions of the peace, and an inferiour court of common pleas, to sit at Pownalborough aforesaid on the second Tuesdays of May and September yearly and in every year, until this court shall otherwise order; and the justices of the said court of the general sessions of the peace and of the said inferiour court of common pleas, who are or shall be thereunto lawfully commissioned and appointed, shall have, hold, use, exercise and enjoy all and singular the powers which are by law already given and granted to such justices within any other county of this province where a court of general sessions of the peace and inferiour court of common pleas are already established; and all appeals from any judgment or judgments given at any courts of general sessions, and at any inferiour court of common pleas within the said county of Lincoln, shall be heard and tried at the superiour court of judicature to be held yearly at Falmouth as aforesaid.

Superiour court at Falmouth.

Governor with advice of council to appoint a register of deeds during the term of five years.

SECT. 8. And be it further enacted, that the governor, with the advice and consent of his majesty's council, shall be authorized to appoint, for and during the term of five years from February next, some fit person within the county of Lincoln to be register of deeds and conveyances within the same, who shall be sworn to the faithful discharge of his trust in said office, and shall continue therein to the end of the term aforesaid, and until some fit person be chosen and appointed in his stead by the freeholders and other inha-

bitants of the several towns and districts within the said county, qualified according to law to act in town and county affairs; and the said register shall be sworn to the faithful discharge of his office in the manner required by law, and shall act in his said office according to the directions of the law, and until a register shall be appointed and sworn, all deeds and conveyances of land lying in any part of the said county of Lincoln, being recorded in the register's office in the county of York aforesaid, shall be held good and valid to all intents and purposes, so far as relates to the recording of the same.

County treasurer, &c. as in other counties.

SECT. 9. And be it further enacted, that the method and proceedings directed to by law for choosing a county treasurer, also for the bringing forward and trying any actions, causes, pleas or suits both civil and criminal in the several counties of this province and courts of judicature within the same, and for choosing of jurors to serve at the several courts of justice, shall be observed and put in practice within the said county of Lincoln, and by the courts of justice within the same, any law, usage or custom to the contrary notwithstanding.

Matters cognizable in the county of York.

SECT. 10. And be it further enacted, that all writs, suits, plaints, processes, appeals, reviews, and recognizances, and any other matters or things which now are, or at any time before the aforesaid first day of November one thousand seven hundred and sixty shall be depending in any court within the county of York, and all matters and things which now are or at any time before the said first day of November aforesaid, shall be depending before the judge of probate for the said county of York, shall be heard, tried, proceeded upon and determined at such time and place, and in such manner as they would have been if this act had not been made.

Deeds registered in the county of York before a register is appointed, held good.

SECT. 11. And be it further enacted, that nothing in this act contained shall be construed to disannul, defeat or make void any deeds or conveyances of land, lying in either of the new counties aforesaid, which are or shall be before the establishment of a register in each county respectively recorded in the register's office of the county of York aforesaid; but all such deeds and conveyances so recorded shall be held as good and valid as they would have been in case this act had not been made.

County taxes held good.

SECT. 12. And be it further enacted, that the inhabitants of the several towns and districts within the counties aforesaid shall pay their proportion of all county rates or taxes already granted and made, in the same manner as they would have done if this act had not been made.

CHAPTER CCLXXIX.

AN ACT IN ADDITION TO AN ACT, INTITLED AN ACT FOR THE BETTER REGULATING THE CHOICE OF PETIT JURORS.

WHEREAS in and by an act made and passed in the present year of his majesty's reign, intitled an act for the better regulating the choice of petit jurors, it is provided, that the selectmen of each town within this province should, sometime before the tenth day of April then next, take a list of the persons liable by law and which they should judge able and well qualified to serve on the petit juries, and lay the same before the town at a meeting in May then next, in order to the town's proceeding thereon, according to the directions of the said act, and whereas in many towns it hath happened, either through inadvertence or otherwise, that no such list hath been taken by the selectmen within the time limited by the said act as aforesaid, by means of which neglect doubts and controversies may arise, unless prevented by the authority of this court,

SECT. 1. Be it therefore enacted by the lieutenant governor, council and house of representatives, that the time for taking such lists by the selectmen, and for their respective towns' proceedings thereon, be extended to the last day of July next, and that in every town where the selectmen shall have taken such list and the town shall have proceeded thereon according to the said act, either on or before the said last day of July next, the same proceedings shall be held valid and good to all intents and purposes whatsoever.

Selectmen to take lists of jurors in July.

SECT. 2. And be it further enacted, that in every town where no such list as is before mentioned hath been as yet taken by the selectmen, if they shall neglect to take such list and lay the same before the town till after the last day of July next, every selectman so neglecting his duty shall forfeit and pay the sum of three pounds for the use of the county in which he dwells at the time of such neglect, to be recovered by action or information brought by the treasurer of such county before any of his majesty's courts of record within the same.

Penalty for neglect.

CHAPTER CCLXXX.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED AND NEAR EXPIRING.

WHEREAS the several acts herein after mentioned, which are now expired or near expiring, have been found useful and beneficial, namely, one act made in the eighteenth year of his present majesty's reign, intitled an act to prevent unnecessary cost being allowed to parties and witnesses in the several courts of justice within this province, three acts made in the twenty-third year of said reign, one intitled an act against diminishing or counterfeiting money, one other, intitled an act in addition to and for rendering more effectual an act for the restraining the taking excessive usury, the other, intitled an act to prevent stage plays and other theatrical entertainments, an act made in the twenty-fourth year of said reign, intitled an act for the better regulation of the course of judicial proceedings,

Be it therefore enacted by the lieutenant governor, council and house of representatives, that such of the beforementioned acts as are expired, with all and every article, clause, matter and thing therein respectively contained, be, and they hereby are revived; and such of said acts as are near expiring are continued; and all the said acts shall be in force from the first day of July next, for the space of ten years, and to the end of the then next session of the general court, and no longer.

CHAPTER CCLXXXI.

AN ACT FOR THE MORE EASY DIVISION AND DISTRIBUTION OF INTESTATE ESTATES.

WHEREAS it often happens that persons dying intestate leave their real estate or some part of it lying in common and undivided with the real estate of some other person, whereby the division or distribution of such estate by the judge of probate to and among the heirs is impeded and

delayed, to the great damage and unnecessary expense of such heirs,

Be it therefore enacted by the lieutenant governor, council and house of representatives, that the respective judges of probate within this province be and hereby are directed and empowered within their several counties, when they make out their warrants for the division of any real estate of any person dying intestate to and among his heirs, or for setting off the widow's thirds, where such estate or any part thereof lies in common or undivided with the real estate of any other person, to direct the committee named in such warrant first to sever and divide the said intestate estate from the estate with which it lies in common as aforesaid, the said committee to be under oath for the faithful discharge of this trust, and the parties concerned on both sides to be timely notified to be present, if they see cause; and such division, so made and accepted by the judge, and duly recorded in the register's office for the same county, shall be binding on all persons concerned.

Judges of probate power as to the division and distribution of intestate estates.

Provided, that where any minors or persons non compos are interested in either of said estates, guardians shall be appointed over them before any such division is made. Provided also, that before the order for such division issue, it be made appear to the respective judges of probate, that the several persons interested in such estate, if living within the province, or the attorneys of such as are absent and have attorneys residing within this province, have been duly notified of such petition, and have had opportunity to make their exceptions to the same.

Proviso.

CHAPTER CCLXXXII.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED AND NEAR EXPIRING.

WHEREAS the several acts hereinafter mentioned, which are now expired or near expiring, have been found useful and beneficial, namely one act, made in the fourteenth year of the reign of king George the second, intitled an act in further addition to an act for regulating of fences, &c. one act, made in the sixteenth year of said reign, intitled an act in addition to the several laws of this province relating to the support

of poor and indigent persons, an act, made in the twenty-third year of said reign, intitled an act for the punishing such offenders as shall be any way concerned in contriving, writing or sending any incendiary or menacing letters, in order to extort sums of money, or other things of value from any of his majesty's good subjects, two acts, made in the thirty-first year of said reign, one intitled an act in addition to an act, intitled an act in addition to the act for providing of pounds, &c. and the other intitled an act further to exempt persons commonly called quakers and annabaptists from paying ministerial taxes, all which acts are expired or near expiring,

Be it therefore enacted by the governor, council and house of representatives, that such of the before mentioned acts as are expired, with all and every article, clause, matter and thing therein respectively contained, be and hereby are revived, and shall be in force from the thirtieth day of January current, and until the thirtieth day of January one thousand seven hundred and seventy-one; and the others of said acts that are near expiring, are hereby continued, and shall be in force until the thirtieth day of January one thousand seven hundred and seventy-one, and no longer.

CHAPTER CCLXXXIII.

AN ACT IN ADDITION TO AN ACT, MADE AND PASSED IN THE THIRTY-THIRD YEAR OF HIS LATE MAJESTY KING GEORGE THE SECOND, INTITLED AN ACT FOR ERECTING AND ESTABLISHING TWO NEW COUNTIES IN THE EASTERLY PART OF THE COUNTY OF YORK.

WHEREAS in and by an act, made and passed in the thirty-third year of the reign of his late majesty king George the second, intitled an act for erecting and establishing two new counties in the easterly part of the county of York, it is among other things enacted and provided as follows, viz. that "all appeals from any judgment or judgments given at any court of general sessions, and at any inferiour court of common pleas within the said county of Lincoln, shall be heard and tried at the superiour court of judicature, to be held yearly at Falmouth, as aforesaid," and whereas the said provision is insufficient to give jurisdiction to the said

superiour court held at Falmouth in other matters and things necessary to be tried and determined by said court,

Superiour court at Falmouth to have jurisdiction in certain cases.

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that the superiour court of judicature, court of assize and general gaol delivery, to be held at Falmouth, in and for the county of Cumberland, shall have from time to time, and at all times hereafter, the same jurisdiction, power and authority for the trial of all actions civil or criminal, the cause whereof has arisen or shall arise within the body of the county of Lincoln, as also to hear and determine all other matters and things arisen or which shall arise within the body of the said county of Lincoln, as the said superiour court by law would have, if the cause of such actions and such matters and things had arisen within the body of the said county of Cumberland.

Jurors to be summoned.

SECT. 2. And be it further enacted, that the grand jurors and petit jurors serving at the superiour court of judicature, court of assize and general gaol delivery, to be holden at Falmouth, shall from time to time be chosen and summoned, in such manner as the law directs for the choice and summons of grand and petit jurors, out of the several towns within the said counties of Cumberland and Lincoln.

And whereas the selectmen of several towns within the said counties of Cumberland and Lincoln may have neglected or omitted preparing a list of persons liable to serve on the petit jury, before the tenth day of April, 1760, in manner as the law directs,

Selectmen to take lists.

SECT. 3. Be it therefore further enacted, that the selectmen of every town and district within the said counties of Cumberland and Lincoln, so neglecting or omitting, shall sometime in the month of April this present year take a list of such persons as are qualified and liable by law within such towns and districts respectively to serve on petit juries, to be laid before such respective towns and districts sometime before the first Tuesday of May next following, at a publick town meeting; and such towns and districts shall proceed to determine upon said lists in like manner as such towns or districts might and would have done by law, if such list had been prepared and presented before the said tenth day of April, 1760; any law, usage or custom to the contrary notwithstanding.

Justices, &c. to grant licenses.

SECT. 4. And be it further enacted, that the justices of the courts of general sessions of the peace for the aforesaid counties of Cumberland and Lincoln shall be and they hereby are empowered to grant licenses to and to take recognizances from innholders and retailers of strong drink within the respective counties at the next courts of general sessions to be holden for such counties respectively, such licenses to continue until the first courts of general sessions which shall

be held and kept in course for such counties respectively next after the twenty-ninth day of June, which shall be in the year 1762; any law, usage or custom to the contrary notwithstanding.

CHAPTER CCLXXXIV.

AN ACT FOR DIVIDING THE COUNTY OF HAMPSHIRE, AND FOR ERECTING AND ESTABLISHING A NEW COUNTY IN THE WESTERLY PART OF THE COUNTY OF HAMPSHIRE, TO BE CALLED THE COUNTY OF BERKSHIRE, AND FOR ESTABLISHING COURTS OF JUSTICE WITHIN THE SAME.

WHEREAS the great extent of the county of Hampshire makes it convenient and necessary that there should be a new county erected and established in the westerly part thereof,

Lands comprised in the county of Berkshire.

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that the towns and plantations herein after mentioned, that is to say, Sheffield, Stockbridge, Egremont, New Marlborough, Poontoosuck, New Framingham, West Hoosuck, Number One, Number Three, and Number Four, and all other lands included in the following limits, viz. beginning at the western line of Granvill, where it touches Connecticut line, to run northerly as far as said west line of Granvill runs, thence easterly to the southwest corner of Blandford, and to run by the west line of the same town, to the northwest corner thereof, from thence northerly in a direct line to the southeast corner of Number Four, and so running by the easterly line of said Number Four to the northeast corner thereof, and thence in a direct course to the southwest corner of Charlemont, and so northerly in the course of the west line of the same town till it comes to the north bound of the province, and northerly on the line between this province and the province of New Hampshire, southerly on Connecticut line, and on the west by the utmost limits of this province, shall from and after the thirtieth day of June, one thousand seven hundred and sixty-one, be and remain one intire and distinct county by the name of Berkshire, of which Sheffield for the present to be the county or shire town; and the said county to have, use and enjoy all such powers, privileges and immunities as by law other counties in this province have and do enjoy.

Inferiour courts, &c. where and when to be held.

SECT. 2. And be it further enacted, that there shall be held and kept within the said county of Berkshire, yearly and in every year, at the times and places in this act hereafter expressed, a court of general sessions of the peace, and an inferiour court of common pleas, viz. at the north parish in Sheffield, on the last Tuesday of April, and first Tuesday of September, and at Poontoosuck, on the first Tuesday of December, and the first Tuesday of March, yearly and in every year until this court shall otherwise order. And the justices of the said court of general sessions of the peace, and inferiour court of common pleas respectively, who are, or shall be thereunto lawfully commissioned and appointed, shall have, hold, use, exercise and enjoy all and singular the powers which are by law already given and granted unto them within any other counties of the province where a court of general sessions of the peace, and inferiour court of common pleas are already established; and the inhabitants of said county of Berkshire shall have, use, exercise and enjoy all such powers, privileges and immunities as by law the inhabitants of any other county within this province, have, use, exercise and enjoy.

Saving.

Saving only, that all appeals from any judgment or judgments given at any court of general sessions of the peace, and at any inferiour court of common pleas within the said county of Berkshire, shall be heard and tried at the superiour court of judicature, to be held yearly in the county of Hampshire.

Superiour court to be held in Hampshire.

SECT. 3. And be it further enacted, that the superiour court of judicature, court of assize and general gaol delivery, to be held in and for the county of Hampshire, shall have from time to time, and at all times hereafter until the further order of this court, the same jurisdiction, power and authority for the trial of all actions, civil or criminal, the cause whereof has arisen or shall arise within the body of the county of Berkshire, as also to hear and determine all other matters and things arisen or which shall arise within the body of the said county of Berkshire, as the said superiour court by law would have if the cause of such actions and such matters and things had arisen within the body of the county of Hampshire.

Jurors, whence to be taken.

SECT. 4. And be it further enacted, that the grand jurors and petit jurors serving at the superiour court of judicature, court of assize and general gaol delivery, to be holden within and for the county of Hampshire, shall from time to time be chosen and summoned, in such manner as the law directs for the choice and summons of grand and petit jurors, out of the several towns within the said counties of Hampshire and Berkshire.

Proviso.

Provided, that all writs, suits, plaints, processes, appeals, reviews, recognizances or any other matters and things,

which now are, or at any time before the said thirtieth day of June shall be depending in the law within any part of the said county of Berkshire, and also all matters and things which now are, or at any time before said thirtieth day of June shall be depending before the judge of probate within any part of the said county of Berkshire, shall be heard, tried, proceeded upon and determined upon in the county of Hampshire, where the same are or shall be returnable or depending, or shall have day or days.

Proviso.

Provided also, that nothing in this act contained shall be construed to disannul, defeat or make void any deeds or conveyances of lands lying in the said county of Berkshire, where the same are or shall be, before the said thirtieth day of June, recorded in the register's office for the county of Hampshire; but that all such deeds or conveyances so recorded shall be held good and valid as they would have been, had not this act been made.

Register of deeds to be appointed.

SECT. 5. And be it further enacted, that the justices of the court of general sessions of the peace, at their first meeting in the said county of Berkshire, shall have full power and authority to appoint some meet person within the said county of Berkshire to be register of deeds and conveyances within the same, who shall be sworn to the faithful discharge of his trust in the said office, and shall continue to hold and exercise the same according to the directions of the law, until some person be elected by the freeholders of the said county of Berkshire, who are hereby empowered to choose such person at their first March meeting within their respective towns and districts, in the method already by law prescribed, which person taking upon him that trust shall be sworn to the faithful discharge thereof; and the office of register of deeds shall be kept in the north parish of Sheffield aforesaid; and until such register shall be appointed by the said justices and sworn, all deeds and conveyances of lands lying within any part of said county of Berkshire, being recorded in the register's office in the county of Hampshire aforesaid, shall be held good and valid to all intents and purposes so far as relates to the record of them.

Rules for proceedings as in other cases.

SECT. 6. And be it further enacted, that the method and proceedings directed to by law for choosing a register of deeds and conveyances, and the county treasurer, which last mentioned officer shall be chosen and appointed, in manner as the law directs, at the next March meeting of the freeholders aforesaid, also for the bringing forward and trying any actions, causes, pleas or suits, both civil and criminal, in the several counties of this province, and courts of judicature within the same, and for choosing jurors to serve at the several courts of justice, shall be observed and put in practice within the said county of Berkshire, and by the courts of justice within the same.

Provided always, that the inhabitants of the several towns and places herein before enumerated, and set off a distinct county, shall pay their proportion to any county rates or taxes already made and granted, in the same manner as they would have done had not this act been made. Proviso.

CHAPTER CCLXXXV.

AN ACT FOR THE BETTER REGULATING DISTRICTS WITHIN THIS PROVINCE.

WHEREAS it has been found expedient to erect districts within this province invested with the powers, privileges and immunities of towns, the privilege of sending a representative to the general assembly only excepted, and it being necessary that all such districts should be subjected to all the duties which towns by law are subjected to, and liable to all such penalties for neglect thereof as towns by law are liable to,

Be it therefore enacted by the governor, council and house of representatives, that each and every the districts within this province shall be and hereby are subjected to all the duties which towns by law are subjected to, and made liable to all the penalties for neglect or failure therein, which towns by law are liable to, and shall to all intents and purposes be considered as towns, the privilege and duty of sending a representative to the general assembly only excepted. Districts subjected to the duties which towns by law are subjected to.

CHAPTER CCLXXXVI.

AN ACT FURTHER EMPOWERING THE COURTS OF GENERAL SESSIONS OF THE PEACE IN THIS PROVINCE TO GRANT LICENSES IN CERTAIN CASES, AND THEREBY TO PREVENT UNNECESSARY PETITIONS TO THE GENERAL COURT.

BE it enacted by the governor, council and house of representatives, that when it shall so happen that any licensed

Justices of the court of general sessions empowered to grant licenses, in case.

innholder or retailer shall die before the year be expired for which license shall have been granted, and the widow of the deceased, if such there be, or children or other representative, shall desire to exercise the said employment in such licensed house the remainder of the year, and where any licensed innholder or retailer shall remove from a licensed house, and the purchaser or occupier of such house shall petition to be licensed to be an innholder or retailer in the same house for the remainder of the year, in every such case it shall be lawful, and the justices of the court of general sessions of the peace are hereby empowered, at any of the terms appointed by law for holding the same in such county, to grant license to such person or petitioner applying therefor the remainder of the year, provided such person be suitably qualified therefor, and recommended in manner as the law directs.

CHAPTER CCLXXXVII.

AN ACT PROVIDING FOR THE LEVYING AND COLLECTING OF TAXES IN PLANTATIONS THAT ARE NOT INCORPORATED.

Province or county treasurer to issue a precept for calling a meeting of the inhabitants of plantations, &c. in case.

SECT. 1. BE it enacted by the governor, council and house of representatives, that when any part or proportion of any province or county tax shall be laid by the great and general court, or by any court of general sessions of the peace within this province, on any plantation not incorporated, the treasurer of the province, or of such county respectively, shall issue his precept to some justice of the peace dwelling near to such plantation, requiring him forthwith to grant his warrant directed to some principal inhabitant of such plantation, requiring him to notify and warn the inhabitants of such plantation, being freeholders, to meet at such time and place within the same as in such warrant shall be specified, in order to choose needful officers for the purposes hereafter mentioned; and such principal inhabitant is hereby obliged to observe and obey the warrant that he shall receive from said justice, on penalty of forfeiting and paying the whole sum that shall be ordered to be levied on such plantation by either of the respective treasurers' warrants aforesaid, to be recovered by action of debt by said respective treasurers in any of his majesty's courts of record within this province proper to try the same; and

such of said inhabitants as shall then assemble shall have power, and they are hereby required to choose a moderator and clerk, as also assessors and collectors for assessing and collecting such plantation's proportion of such province and county tax, to be duly paid when collected by such collectors to the province or county treasurer respectively; and such clerk, assessors and collectors shall be under oath, to be administered by the moderator of such meeting, for the the faithful discharge of their respective trust, and shall have the same allowance from such incorporate plantations as such officers are intitled unto by law in towns corporate; and in case any assessor or collector so chosen shall, after notice of such choice given him by the moderator, refuse or neglect to appear and take such oath, he shall be liable to the same penalty which assessors and collectors in towns corporate are liable to in case of such refusal or neglect.

Inhabitants of said plantations to choose certain officers, &c.

SECT. 2. And be it further enacted, that the assessors so chosen and sworn shall thereupon take a list of the rateable polls, and a valuation of the estates and faculties of the inhabitants of such plantation, for a rule by which to make such assessment, and by which to judge of the qualification of voters in meetings of the said inhabitants thereafter to be holden, until other valuation shall be made.

Assessors to take a valuation, &c.

SECT. 3. And be it further enacted, that in case the inhabitants of any such plantation shall neglect to assemble, or being assembled shall neglect to choose all such officers as herein before are required, it shall be in the power of the court of general sessions of the peace in the county where such plantation is, and the justices of such court are required to appoint some meet persons, inhabitants of such plantation, to be assessors and collectors of such taxes as aforesaid, who shall be duly sworn to the faithful discharge of their respective trust, and shall conform to the directions and proceed by the rules which assessors and collectors in towns corporate are obliged to observe.

Justices of the court of general sessions to appoint assessors and collectors, in case.

SECT. 4. And be it further enacted, that the assessors who shall from time to time be chosen or appointed for such plantation shall have power, and they are required to issue their warrants for calling meetings of the inhabitants there in the month of March annually for choosing such officers as aforesaid, who shall be sworn as aforesaid, and shall have the same power, and be subject to the same penalties as assessors and collectors in towns and parishes have, and are by law liable to.

Assessors to issue their warrants for calling a meeting in March annually, &c

CHAPTER CCLXXXVIII.

AN ACT IN ADDITION TO AN ACT MADE AND PASSED IN THE TENTH YEAR OF QUEEN ANNE, ENTITLED AN ACT FOR SUPPRESSING ROBBERIES AND ASSAULTS.

WHEREAS the act, entitled an act for suppressing robberies and assaults, made and passed in the tenth year of queen Anne, is insufficient to restrain ill minded and wicked ruffians from assaulting and robbing his majesty's liege people as they are travelling the common roads, highways or streets,

Persons convict guilty of felony.

SECT. 1. Be it enacted by the governor, council and house of representatives, that every person or persons that shall after the first day of December next assault, rob and take away from the person of another, in or upon any highway, street, passage, field or open place, any money, goods, clothing or other thing whatsoever, and shall be thereof convict, shall be adjudged guilty of felony, and suffer the pains of death accordingly, without benefit of clergy.

And whereas by the act aforesaid it is enacted, "that whoever shall be convicted of assaulting or offering any violence or insolence to any woman or woman kind in the fields, streets or lanes in any town, or of despoiling them, damnifying or defacing any of their attire or ornaments, or attempting the same, shall be punished by being publickly whipped not exceeding ten stripes, or by being committed to the house of correction, to receive the discipline of the house, and continue there by the space of thirty days, and kept according to the rules and orders of the house, and also find sureties for the good behaviour before he be discharged, and any two justices of the peace, quorum unus, in the vacancy of the court of general sessions of the peace, are empowered to hear and determine this offence,"

Justices of the court of the sessions to try.

SECT. 2. Be it further enacted, that instead of the abovementioned offence being tried by two justices of the peace, quorum unus, it shall be tried by the justices of the court of general sessions of the peace, who are hereby empowered and directed to try the same, and the person or persons convicted shall be sentenced to pay a fine not exceeding ten pounds, at the discretion of the justices, according to the nature of his or their offence, or to be publickly whipped not exceeding ten stripes, any law, usage or custom to the contrary notwithstanding.

CHAPTER CCLXXXIX.

AN ACT TO SUBJECT THE UNIMPROVED LANDS WITHIN THIS PROVINCE TO BE SOLD FOR PAYMENT OF TAXES ASSESSED ON THEM BY ORDER OF THE GREAT AND GENERAL COURT, AND VOTES AND AGREEMENTS OF THE PROPRIETORS THEREOF, AND TO ENABLE PROPRIETORS OF NEW PLANTATIONS TO LEVY PROVINCE AND COUNTY TAXES LAID UPON THEM.

WHEREAS it frequently happens that the proprietors of unimproved lands within the several towns, precincts, districts, new plantations and proprieties within this province neglect or delay to pay their proportions of the sums from time to time assessed on such lands by order of the great and general court, and according to their own agreements, towards defraying the publick charges arising within such towns, precincts, districts, new plantations and proprieties,

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that if the assessors of any of the towns, precincts, districts, new plantations or proprieties within this province have, or at any time to come shall, pursuant to the direction or orders of the general court, levy or assess a tax upon the lands of the proprietors, situate in any of the towns, precincts, districts or new plantations within this province, for defraying the publick charges arising in the said towns, precincts, districts, new plantations or proprieties, or if the assessors chosen by the proprietors of the common and undivided land in any of the towns, precincts, districts, new plantations or proprieties within this province, pursuant to the votes and agreements of such propriety, have or shall levy or assess a tax upon such proprietors by them thought necessary to carry on and prosecute any actions or suits that may be brought by or against them, or for the carrying on and managing of any other publick affair relating to such proprietors, or performance of the conditions of their grant respectively, and such proprietors shall neglect or delay to pay to the collector or collectors the sums from time to time levied or assessed upon their lands as aforesaid, for sixty days after such assessment is made and published by posting up the same in the town, precinct, district or new plantation where such land lies, and in the shire town of the county, that then and in such case it shall and may be lawful for such assessors respectively to post up in some publick place or places in the town, precinct, district or new plantation where the lands lie, notifications of the intended sale of so much and no more of

Lands to be sold in case of non-payment of taxes.

Notification of sale to be posted up.

such delinquent proprietor's lands or common rights, as they shall judge necessary to pay and satisfy such rates and taxes, and other necessary and intervening charges, three months before the same be sold; and also the assessors shall be obliged for the notification of the non-resident proprietors to advertise in all the several Boston newspapers, three several weeks, the intended sale, at least three months before the land be sold; and if any delinquent proprietors do not by that time pay such rates or assessments and charges, then and in that case it shall and may be lawful for the assessors at a publick vendue to sell, and execute absolute deeds in the law for the conveyance of such lands of the proprietors to the person or persons who shall give most for the same, which deeds shall be good and valid to all intents and purposes in the law for conveying such estates to the grantees, their heirs and assigns for ever. And if the said lands be sold for more, then the overplus, after all charges arising about the same are subducted, to be paid to such delinquent proprietors or their order, the money which the said lands shall be sold for to be lodged in the hands of the treasurers of the respective towns, precincts, districts or proprieties, who are hereby directed to attend the orders of the assessors of such towns, precincts, districts or proprieties for payment of the same, pursuant to the true intent and meaning of this act, reserving to such non-resident proprietors as are not inhabitants of this province, their heirs or assigns, liberty for redemption of their lands so sold, they paying to the grantees or their heirs respectively, within one year afterwards, the sums for which the said lands were sold, with double damages, until the same be redeemed.

And advertised in the newspapers.

Overplus money to be returned.

Right of redemption, in case.

SECT. 2. And be it further enacted, that the assessors of the several new plantations in the counties of Worcester, Hampshire and Berkshire, which are not incorporated into towns or districts, upon which any part of the province tax is laid, be and hereby are authorised, empowered and directed to levy all province and county taxes set upon such plantations upon the whole propriety, except the publick rights, viz. each acre an equal part, and the collector or collectors are required to collect the same; and in case any of the proprietors of such new plantations in said counties neglect for the space of sixty days to pay such assessment, then the assessors shall sell such delinquent proprietor's lands, proceeding in manner as is above directed in this act for the sale of proprietor's lands.

New plantations in Worcester, Hampshire and Berkshire to be assessed.

CHAPTER CCXC.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED OR NEAR EXPIRING.

WHEREAS the several acts herein after mentioned, made in the reign of his late majesty king George the second, and in the several years of the same reign, as in this act is set forth, which are now expired or near expiring, have been found useful and beneficial, viz. two acts made in the sixteenth year, one entitled an act to prevent multiplicity of lawsuits, the other an act entitled an act in further addition to and explanation of an act for regulating townships, choice of town officers, &c., also an act made in the seventeenth year, entitled an act to regulate the expense of private bridges, two acts made in the twenty-fourth year, one entitled an act for the support of ministers in new plantations; another act, entitled an act in addition to an act for regulating fences, cattle, &c., an act made in the thirtieth year, entitled an act for further regulating the course of judicial proceedings, an act made in the thirty-second year, entitled an act in addition to an act entitled an act for regulating of fences, cattle, &c., an act made in the thirty-third year, entitled an act in further addition to the act for limitation of actions, and for avoiding suits in law where the matter is of long standing,

Be it therefore enacted by the governor, council and house of representatives, that such of the before mentioned acts as are expired, with all and every article, clause, matter and thing therein respectively contained, be and hereby are revived, and shall be in force until the first day of July which will be in the year of our Lord one thousand seven hundred and sixty seven; and such of said acts as are not yet expired are hereby continued and shall be in force until the said first day of July anno Domini one thousand seven hundred and sixty-seven, and no longer.

CHAPTER CCXCI.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED AND NEAR EXPIRING.

WHEREAS the several acts herein after mentioned, which are now expired or near expiring, have been found useful and beneficial, viz. three acts made in the tenth year of king George the second, one entitled an act for securing the seasonable payment of town and precinct rates or assessments, another entitled an act in further addition to an act made in the first year of his present majesty's reign, entitled an act to prevent coparceners, joint tenants and tenants in common from committing strip and waste upon lands by them held in common and undivided, the other entitled an act in further addition to an act entitled an act for the relief of idiots and distracted persons, one act made in the fourteenth year of said reign, entitled an act to encourage the increase of sheep and goats, one act made in the eighteenth year of said reign, entitled an act in addition to the act entitled an act for appointing commissioners of sewers, two acts made in the twenty-second year of said reign, one entitled an act for the ease of prisoners for debt, the other entitled an act for the more easy partition of lands, an act made in the twenty-third year of said reign, entitled an act in addition to the act entitled an act to encourage the increase of sheep and goats, one act made in the twenty-fourth year of said reign, entitled an act for preventing and suppressing riots, routs and unlawful assemblies, three acts made in the twenty-sixth year of said reign, one entitled an act for the more easy partition of lands or other real estate given by will and held in common and undivided among the devisees, another act entitled an act for further preventing all riotous, tumultuous and disorderly assemblies or companies of persons, and for preventing bonfires in any of the streets or lanes within any of the towns of this province, another act, entitled an act for preventing damage by horses going at large, an act made in the twenty-seventh year of said reign, entitled an act in addition to the several laws of this government made for the regulating general fields, also, one act made in the thirty-third year of said reign, entitled an act for the more easy division and distribution of intestate estates,

Be it therefore enacted by the governor, council and house of representatives, that such of the before mentioned acts as are expired be revived, and such of said acts as are not yet expired be continued, with all and every article, clause, matter and thing therein respectively contained, and shall be in force until the first day of July which shall be in the year of our Lord one thousand seven hundred and seventy, and no longer.

CHAPTER CCXCII.

AN ACT FOR THE RELIEF OF POOR PRISONERS FOR DEBT.

Prisoners for debt who have no estate, to apply to two justices.

SECT. 1. BE it enacted by the governor, council and house of representatives, that when any person standing committed for debt or damages shall complain that he or she hath not estate sufficient to support him or herself in prison, the gaoler or keeper of such prison shall, at the request of such prisoner, apply to two justices of the peace within the county, quorum unus, who shall thereupon make out a notification under their hands and seals, to be served on the creditor or creditors of such prisoner, if he, she or they live within this province, his or her executor, administrator, agent or attorney, who brought forward the suit upon which judgment was made up, and execution issued, upon which the prisoner stands committed, by reading the same to them, or by leaving an attested copy thereof at the place of his, her or their usual abode, or if out of the province, then to be left at the place of the usual abode of such creditor or creditors, agent or attorney as aforesaid, thereby signifying to him, her or them, such prisoner's desire of taking the privilege and benefit allowed in and by this act, and of the time and place appointed for the intended caption of his or her oath, which notification shall be served at least forty days before the caption, and so certified to the justices, that he, she or they may be present, if they see cause; and in case any creditor lives out of this province, and hath no agent or attorney in it as aforesaid, the justices shall cause a notification to be left with the clerk of the court from which the execution issued, fifty days before the intended caption; and such justices, or in case of their non-attendance, then any other two justices, quorum unus, are hereby empowered to administer to the debtor, if they think proper so to do, after

Justices' notification to the creditors, how to be served.

they have fully examined and heard the parties, the following oath, viz.

Form of the oath.

I A. B. do upon my oath solemnly profess and declare before almighty God, that I have not any estate real or personal in possession, reversion, or remainder, sufficient to support myself in prison, or to pay prison charges; and that I have not, since the commencement of this suit upon me, nor at any other time, directly or indirectly sold, leased or otherwise conveyed or disposed of to, or intrusted any person or persons whomsoever with all or any part of the estate real or personal, whereof I have been the lawful owner or possessor, with any intent or design to secure the same, or to receive or to expect any profit or advantage therefrom, or done, caused or suffered to be done any thing else whatsoever, whereby any of my creditors may be defrauded. So help me God.

Prisoners to be discharged in case.

Which oath being taken by such prisoner, and certificate thereof made under the hands and seals of the justices administering the same, to the gaoler or keeper, he shall thereupon set such prisoner at liberty, unless the creditor or creditors, agent or attorney, notified as aforesaid, his, her or their executor or administrator, shall give security to the gaoler or keeper, for the payment of four shillings and six pence per week, for and towards the support of such prisoner, while he or she shall be detained in prison and the gaoler or keeper shall detain and keep in custody such prisoner, so long as said sum shall be paid, but upon failure of payment thereof, shall set him or her at liberty; and in case the gaoler shall refuse or delay to discharge any prisoner who has complied with this act, he shall forfeit and pay to the prisoner the full sum for which he stands committed, to be recovered by action of debt in any court proper to try the same.

Penalty on prisoner's having acted contrary to his oath.

Sect. 2. And be it further enacted, that if any such prisoner as aforesaid shall be convicted of having sold, leased or otherwise conveyed or disposed of, or intrusted his or her estate, or any part thereof, directly or indirectly, contrary to his or her foregoing oath, he shall not only be liable to the pains and penalties mentioned in the act for punishing of wilful perjury, but shall receive no benefit from his oath; or in case such prisoner at the time of the intended caption shall not take the aforesaid oath, or be not admitted thereto by the justices, he or she shall be remanded back to the gaol, and shall not be entitled to the benefit of this act, unless a new notification be made and served in manner aforesaid.

Judgment to remain good against estate of prisoners.

And all and every judgment obtained against such prisoner shall, notwithstanding such discharge as aforesaid, be and remain good and effectual in law to all intents and purposes against any estate whatsoever, which may then or at any time afterwards belong to him; and the creditor or

creditors, agent or attorney, their executors or administrators, may take out a new execution against the lands, tenements, hereditaments, goods and chattels of such prisoner, his wearing apparel, bedding for himself or his family, and tools necessary for his trade or occupation only excepted, for the satisfaction of the debt in such sort and manner as might have been done in case such prisoner had never been taken in execution.

Provided nevertheless and it is hereby declared, that such prisoner as aforesaid shall only be discharged from the execution or executions whereon such process as is before mentioned has been had, and not from any other whereon he or she may be committed, until the oath and directions before described be taken and attended, nor shall this act be construed to extend to any person in custody for any fine imposed upon him. Proviso.

CHAPTER CCXCIII.

AN ACT IN ADDITION TO THE ACT, MADE AND PASSED IN THE EIGHTH YEAR OF THE REIGN OF HER LATE MAJESTY QUEEN ANNE, ENTITLED AN ACT FOR REGULATING OF DRAINS OR COMMON SHORES.

WHEREAS in and by an act, made and passed in the eighth year of the reign of her late majesty queen Anne, entitled an act for regulating of drains and common shores, it is enacted, among other things, "that it shall and may be lawful to and for any one or more of the inhabitants of any town, at his and their own cost and charge, to make and lay a common shore or main drain for the benefit of themselves and others that shall think fit to join therein, and every person that shall afterwards enter his or her particular drain into such common shore or main drain, or by any more remote means receive benefit thereby, for the draining of their cellars or lands, shall be obliged to pay unto the owner or owners of such common shore or main drain a proportionable part of the charge of making or repairing the same, or so much thereof as shall be below the place where any particular drain enters thereinto, at the judgment of the selectmen of the town, or major part of them."

And whereas it frequently happens that the main drains or common shores decay and fill up, and the persons imme-

diately affected thereby are obliged to repair such common shore to prevent damage to themselves and others whose drains enter above as well as below them, and no particular provision is made by said act to compel such persons as dwell above that part where common shores are repaired, and have not sustained damage, to pay their proportionable share thereof as shall be adjudged by the selectmen, nor in what manner the same shall be recovered, which has already occasioned many disputes and controversies, wherefore, for preventing the same for the future,

Persons receiving benefit by common shores to pay their proportion for cleansing.

Be it enacted by the governor, council and house of representatives, that whensoever it shall hereafter happen, after the second day of April next, that any common shore or main drain is stopped or gone to decay, so that it will be necessary to open such common shore or main drain to remove such stoppage and repair it, not only the person or persons who shall so do, or cause the same to be done, but all others whose drains enter either above or below such common shore or main drain, or receive any benefit by said common shore or main drain, shall pay such a proportionable part of the whole expense of opening and repairing the common shore or main drain as shall be adjudged to them by the selectmen of the town, or the major part of them, to be certified under their hands; and if any person or persons after such certificate is made shall refuse to pay the same within ten days to the person so appointed by the selectmen to receive it, being duly notified thereof, he shall be liable and subject to pay to such person appointed double the sum mentioned in such certificate, and all costs arising upon such refusal; and such person is hereby fully authorised and empowered to bring an action or actions for the same accordingly.

Proviso.

Provided always, that the person or persons, who have occasion to open any common shore or main drain in order to clear or repair the same, shall first notify all persons who are interested therein, that they may have an opportunity of making their objections against such person's proceedings, and laying the same before the selectmen; and if the selectmen or major part of them judge their objections reasonable, then such person or persons shall not be obliged to pay any part of the charge thereof; but if they do not make their objections in person or writing within three days after warning given, or the selectmen or the major part of them determine their objections not of sufficient force, then such person or persons may, having first liberty therefor under the hands of the major part of the selectmen, proceed to open such common shore, and clean and repair the same, and all interested in such common shore or main drain shall pay their proportion as is provided in this act.

Provided also, that nothing in this act shall be construed or understood to set aside or make void any covenants or agreements already made, or that hereafter may be made among the proprietors of such drains or common shores. Proviso.

CHAPTER CCXCIV.

AN ACT TO EXEMPT THE PEOPLE CALLED QUAKERS FROM THE PENALTY OF THE LAW FOR NON-ATTENDANCE ON MILITARY MUSTERS.

WHEREAS the people called quakers profess themselves conscientiously scrupulous of attending in arms at military musters,

Be it therefore enacted by the governor, council and house of representatives, that such of the inhabitants of this province as are called quakers, and who shall appear to be such, according to a rule laid down by a law of this province made in the thirty-first year of his late majesty king George the second, entitled an act further to exempt persons commonly called quakers and anabaptists from paying ministerial taxes, shall, during the continuance of this act, be exempted from the penalty of the law for non-attendance on military musters. Quakers exempted from attending military musters.

CHAPTER CCXCV.

AN ACT FOR THE MORE SAFE KEEPING THE RECORDS OF THE SEVERAL COURTS OF JUSTICE IN THIS PROVINCE.

WHEREAS complaints have been frequently made to this court, that the several clerks of the courts of justice and registers to the courts of probate in this government have been remiss and negligent in keeping up the records of said courts, whereby great mischiefs have arisen, for preventing whereof for the future,

SECT. 1. Be it enacted by the governor, council, and house of representatives, that from and after the first day of June

Clerks of the superiour court to give bond.

next, the several clerks of the superiour court of judicature, court of assize and general gaol delivery that are now appointed by said court shall give bond, to be approved of by the justices of the said court, in the sum of one hundred pounds, with one or more sureties, to the province treasurer, for the faithful discharge of their trust, and to keep up the records of said court seasonably and in good order.

Clerks of the courts of general sessions, inferiour court and registers of probate to give bond.

SECT. 2. And be it further enacted, that the several clerks of the several courts of general sessions of the peace, and of the several courts of common pleas, and the several registers of probate in this province, that are now appointed, are hereby enjoined to give their several bonds, to be approved of by the justices of the general sessions of the peace in the several counties respectively, at their next term after the first day of June next, with one or more sufficient sureties for the sum of one hundred pounds to the county treasurer of their several counties, for the faithful discharge of their respective trusts, and keeping up the several records of the respective courts they are appointed to, either as clerk or register as aforesaid.

Penalty.

SECT. 3. And be it further enacted, that it shall be adjudged a forfeiture of either of the bonds aforesaid for any of said clerks or registers, or those that may be appointed to either of those offices, sickness or any extraordinary casualties excepted, that shall not have their records all completed within six months at any one time after the first day of June next; and any clerk or register hereafter to be appointed to either of said offices that shall not give bond as aforesaid, before he or they enter on their respective offices, or that shall incur a forfeiture of their bond, shall and hereby are declared incapable of holding either of the respective offices aforesaid.

And to render this act more effectual for the purposes aforesaid,

Justices and judges to inspect records.

SECT. 4. Be it further enacted, that the justices and judges of the several courts aforementioned are hereby required to inspect the conduct of their several clerks and registers with respect to the records aforesaid; and upon any deficiency as aforesaid, such judge and justices shall give information thereof to the treasurer who has the delinquent's bond in keeping, which treasurer being so informed shall forthwith put such delinquent's bond in suit; and the money recovered on such suit shall be applied for bringing up the deficient records, under the direction of the respective judge or judges of the court or courts where such deficiency shall happen; and if there be a surplusage of such fine, it shall be applied to the use of the county where the defect of the records happens; and if the fine shall be insufficient for the purpose aforesaid, the estate of the deficient clerk or register shall be held liable to pay the same.

Clerks' and registers' estates held liable.

CHAPTER CCXCVI.

AN ACT IN FURTHER ADDITION TO AN ACT FOR THE ORDERLY CONSUMMATING OF MARRIAGES, MADE AND PASSED IN THE FOURTH YEAR OF THE REIGN OF THEIR LATE MAJESTIES KING WILLIAM AND QUEEN MARY.

WHEREAS there are several parishes within this province that have been and hereafter may be made out of two adjacent towns or more, and the settled and ordained ministers in such parishes have not power by law to solemnize marriages in those parts of their respective parishes that do not belong to the town in which they themselves dwell, which in many respects hath been found by experience to be very inconvenient, wherefore,

Be it enacted by the governor, council and house of representatives, that the power granted to ministers to join persons together in marriage be hereby enlarged, and that every settled and ordained minister in any of the parishes and districts in this province, though they may be composed of parts of several towns, shall be, and are hereby fully authorised and empowered to solemnize marriages betwixt persons that may lawfully enter into such a relation, within the bounds of their respective parishes, in as ample a manner as they may lawfully do in the several towns in which they dwell.

Ministers empowered to marry without their parishes.

CHAPTER CCXCVII.

AN ACT IN ADDITION TO AN ACT, ENTITLED AN ACT AGAINST ADULTERY AND POLYGAMY.

WHEREAS in and by an act, made and passed in the sixth year of king William and queen Mary, entitled an act against adultery and polygamy, it is among other things enacted, "that if any man be found in bed with another man's wife, the man and woman so offending, being thereof convicted, shall be severely whipped, not exceeding thirty stripes, unless it appears upon trial that one party was surprised and

did not consent, which shall abate the punishment as to such party," for the more effectual preventing the crime aforesaid,

Penalty for a man's being in bed with another's wife.

Be it enacted by the governor, council and house of representatives, that when and so often as any person shall be convicted of the crime aforesaid upon any law or laws of this province, it shall and may be lawful for the justices of the court of assize and general gaol delivery, before whom such conviction shall be had, to sentence such offender to pay a fine not exceeding one hundred pounds, and in default thereof to be imprisoned not exceeding six months, or be whipped not exceeding thirty stripes.

CHAPTER CCXCVIII.

AN ACT FOR RECORDING SUCH PAPERS PROPER TO BE RECORDED, THAT HAVE BEEN EXHIBITED TO, AND RECEIVED BY THE SUPERIOUR COURT OF JUDICATURE, COURT OF ASSIZE AND GENERAL GAOL DELIVERY, OR BY THE SEVERAL JUDGES OF PROBATE OF WILLS AND GRANTING LETTERS OF ADMINISTRATIONS, OR BY THE RESPECTIVE COURTS OF GENERAL SESSIONS OF THE PEACE, AND INFERIOUR COURTS OF COMMON PLEAS, AND FOR RECORDING ALL JUDGMENTS OR DECREES OF SAID COURT OR COURTS, WHERE THE CLERK OR CLERKS, REGISTER OR REGISTERS OF SAID COURT OR COURTS ARE DECEASED, LEAVING THE SAME NOT RECORDED.

Papers to be recorded in the several courts of law and court of probates.

Estates of deficient clerks or registers liable to defray the charge of recording.

SECT. 1. BE it enacted by the governor, council and house of representatives, that the justices of the superiour court of judicature, court of assize and general gaol delivery, the judges of the probate of wills and granting letters of administrations, the justices of the court of general sessions of the peace, and the inferiour court of common pleas, are hereby respectively empowered and enjoined, where any clerk or register of either of the before mentioned courts are deceased, leaving any papers, judgments or decrees unrecorded in either of said courts, which are proper to be recorded, forthwith to cause the same to be put upon record by such person or persons as they shall employ for that purpose, the charge arising therefrom to be paid out of the estate of such deficient clerk or register, provided there is a sufficiency left therefor, and the surviving clerk or register is hereby empowered and enjoined to prosecute for and recover the same;

but where there is not a sufficiency of estate left to defray the charge aforesaid, if such charge hath arisen by the neglect of the clerk or clerks of said superiour court, the same shall be paid out of the province treasury, if through the neglect of the register or registers, clerk or clerks of the court of probate, the court of general sessions of the peace, or inferiour court of common pleas, then such charge shall be paid by the county where such deficient register or clerk lived and sustained said office. And the successors of the clerks or registers aforesaid are hereby respectively empowered and required to demand and receive, sue for, and recover the papers, judgments and decrees aforesaid, that so the same may be recorded according to the directions in this act made and provided.

Former clerks or registers now living, if deficient, to defray the charge.

SECT. 2. And be it further enacted, that if any one that has been a clerk or register of either of the courts aforesaid, that may be still surviving, and not now in said office, hath been, and still continues deficient in any instance beforementioned, that in every such case the same power is hereby given to each of the courts aforesaid, as by this act is provided, where the deficient clerks or registers may be dead; and every person that has been clerk or register, and hath been, and still continues deficient as aforesaid, shall be liable and hereby is subjected to pay all such costs and charges as may arise from such his neglect; and the surviving clerk or register is hereby empowered and enjoined to prosecute for and recover the same.

CHAPTER CCXCIX.

AN ACT IN ADDITION TO THE ACTS ALREADY MADE FOR THE MORE SPEEDY EXTINGUISHMENT OF FIRE, AND PRESERVING GOODS ENDANGERED BY IT.

WHEREAS in and by an act, made and passed in the eighteenth year of the reign of his late majesty king George the second, entitled an act for the more speedy extinguishment of fire, and preserving goods endangered by it, it is enacted, "that the several towns within this province may, if they see meet, at their anniversary meeting in March annually, appoint a suitable number of persons, not exceeding ten, who shall be denominated firewards, whose particular business shall be to take care and govern at fires, which from time to time may break out, as in and by said act they are

directed and empowered to do," and in and by an act, passed in the twenty-fifth year of his late majesty, the town of Boston are empowered to choose, if they see fit, two persons for firewards over and above the number they were empowered to choose by the act, passed in the eighteenth year of the reign aforesaid, and whereas it is apprehended it would greatly serve the said town of Boston, if their numbers were still increased,

Town of Boston may elect sixteen firewards.

Be it enacted by the governor, council and house of representatives, that it shall and may be lawful for the town of Boston, who at present have twelve firewards, at any town meeting warned for that purpose, to elect and appoint four more meet persons as firewards, who shall serve in that office till their anniversary meeting in March next, and from thence forward, as they shall see cause, to choose sixteen persons for that purpose annually, who shall do the duty, and be invested with the like powers and privileges as firewards in and by the said acts are invested.

CHAPTER CCC.

AN ACT TO ENABLE JUSTICES OUT OF COURT TO GRANT LICENSE IN CERTAIN CASES TO RETAIL STRONG LIQUORS, AND TO KEEP HOUSES OF PUBLICK ENTERTAINMENT, AND THEREBY TO PREVENT UNNECESSARY PETITIONS TO THE GENERAL COURT.

Justices to grant licenses in certain cases.

Be it enacted by the governor, council and house of representatives, that when it shall happen that any licensed innholder or retailer shall be deceased before the year be expired, for which license shall have been granted, and the widow of the deceased, if such there be, or other person improving such licensed house, shall desire to exercise said employment therein the remainder of the year, and shall make application to two justices of the peace, quorum unus, in the county where such house shall be, such justices are hereby empowered and enabled to grant license to such person, making application for such license for the remainder of the year, provided such person be suitably qualified therefor, and recommended by the selectmen of the town, in manner as the law directs.

Proviso.

Provided always, that the person so licensed shall recognize before said justices with sureties as the law directs, for his or her keeping good rule and order, and duly paying the excise before they exercise the said employment.

CHAPTER CCCI.

AN ACT FOR THE BETTER REGULATING OF THE SERVICE OF EXECUTIONS, MORE ESPECIALLY IN THE REMOTE COUNTIES OF THE PROVINCE.

WHEREAS the inferiour court of common pleas in several of the counties of this province are by law held twice only in the year, so that executions upon judgments obtained in such counties at said courts are returnable but once in six months, whereby the creditor is or may be kept for a long time out of his just debt, while in the other counties of the province the writs are returnable every three months,

Be it therefore enacted by the governor, council and house of representatives, that from and after the publication of this act, the clerks of the inferiour court of common pleas in and for the said counties are hereby authorised and directed to make all executions on judgments obtained in said courts returnable into the said clerk's office within three months from the date thereof; and the clerk of said courts is further authorised, upon the return of such execution, to renew or make out an alias execution for the whole or the remainder, as the case may be, returnable at the next inferiour court, to be held in and for such counties.

Executions, how to be made out.

CHAPTER CCCII.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED AND NEAR EXPIRING.

WHEREAS the several acts hereinafter mentioned, which are now expired or near expiring, have been found useful and beneficial, viz. two acts made in the thirty-second year of the reign of king George the second, one entitled an act providing that the solemn affirmation of the people called quakers shall in certain cases be accepted instead of an oath in the usual form, the other entitled an act in addition to an act relating to executors and administrators,

Be it therefore enacted by the governor, council and house of representatives, that such of the before mentioned acts as are expired be revived, and such of said acts as are not yet expired be continued, with all and every article, clause, matter and thing therein respectively contained, and shall be in force until the first day of July, which will be in the year of our Lord one thousand seven hundred and seventy, and no longer.

CHAPTER CCCIII.

AN ACT IN ADDITION TO AND EXPLANATION OF THE SEVERAL ACTS OF THIS PROVINCE, PROVIDING FOR THE SUPPORT AND MAINTENANCE OF THE POOR.

WHEREAS a doubt has arisen on an act passed in the fourth year of king William and queen Mary, entitled an act for regulating of townships, choice of town officers, and setting forth their power, whether the justices of the peace in the court of quarter sessions have power to assess the relations of a poor person within the degrees mentioned for any cost accrued before application to the court of sessions, or for any costs that one of the relations of a poor person may have been at for the support of such poor persons before they are cast upon the town,

Quarter sessions to assess the relations for support of poor persons in certain cases.

Be it therefore enacted by the governor, council and house of representatives, that the justices of the court of quarter sessions shall, and hereby are enabled from time to time to assess the relations within the degrees mentioned in the aforesaid act of king William and queen Mary for any cost or charges incurred by one relation of a poor person for the support of such poor person before such poor person shall be so burdensome as to be cast upon the town, as also for any costs incurred by the maintenance of any poor person before application made to the sessions, provided that no assessment shall be made in favour of any particular relation or town for any support for more than two years preceding such application to the court of quarter sessions.

Proviso.

CHAPTER CCCIV.

AN ACT IN ADDITION TO THE LAWS OF THIS PROVINCE RELATING TO WAYS.

WHEREAS in and by the laws of this province the justices in the courts of general sessions of the peace in the respective counties are empowered in certain cases to lay out particular and private ways, but no provision by law is made for the discontinuance of such ways so laid, when they are found not to be necessary,

Be it therefore enacted by the governor, council and house of representatives, in general court assembled, that it shall and may be lawful for the justices of the respective courts of general sessions of the peace, so often as occasion may require, upon application made by any parties aggrieved at the continuance of such ways, and all parties interested in such ways being duly cited and heard, to discontinue any particular or private way laid out as aforesaid.

Court of sessions empowered to discontinue particular and private ways.

CHAPTER CCCV.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED AND NEAR EXPIRING.

WHEREAS the several acts herein after mentioned, which are expired or near expiring, have been found useful and beneficial, namely, one act made in the ninth year of the reign of king George the second, entitled an act to enable the overseers of the poor and selectmen to take care of idle and disorderly persons, one act made in the twenty-ninth year of the same reign, entitled an act in addition to the several acts and laws of this province now in force respecting poor and idle, disorderly and vagrant persons, one act made in the thirty-third year of same reign, entitled an act relating to ferries,

Be it therefore enacted by the governor, council and house of representatives, that such of the beforementioned acts as

are expired be revived, and such of the said acts as are not yet expired be continued, with all and every article, clause, matter and thing therein respectively contained, and shall be in force until the twenty-fifth day of March, which will be in the year of our Lord one thousand seven hundred and seventy.

CHAPTER CCCVI.

AN ACT IN ADDITION TO THE SEVERAL LAWS ALREADY MADE RELATING TO THE REMOVAL OF POOR PERSONS OUT OF THE TOWNS WHEREOF THEY ARE NOT INHABITANTS.

WHEREAS in and by an act, passed in the fourth year of the reign of their late majesties king William and queen Mary, entitled an act for regulating of townships, choice of town officers, and setting forth their power, it is among other things enacted, "that any person orderly warned to depart any town whereof he is not an inhabitant, and neglecting so to do by the space of fourteen days next after such warning given, may by warrant of the next justice of the peace be sent and conveyed from constable to constable unto the town where he properly belongs, or had his last residence, at his own charge, if able to pay the same, or otherwise at the charge of the town so sending him,"

And whereas it frequently happens that the persons so sent and conveyed by warrant as aforesaid do not properly belong to nor had their last lawful residence in any town in this province, but are inhabitants of some other province or colony, and are poor and unable to pay the charge of such their removal, whereby an unequal charge and burden arises to the towns to which such poor persons happen to come,

For remedy whereof, and to the end that such charges may be borne in a more equitable and just proportion,

How poor persons are to be conveyed out of the province.

SECT. 1. Be it enacted by the governor, council and house of representatives, that when and so often as any such person or persons are to be sent or conveyed out of this province, it shall and may be lawful for any justice of the peace of the county from whence the person or persons are to be sent or conveyed, and he is hereby empowered to grant a warrant for sending such person or persons out of the province, either by land or water, as he shall think will be most convenient, or least liable to charge.

SECT. 2. And be it further enacted, that when and so often as it shall happen that any person so to be sent and conveyed, either by land or water, as shall be thought most convenient, by warrant as aforesaid, doth not properly belong to nor had gained a settlement in any town in this province, but is an inhabitant of, or had settlement in some one of his majesty's provinces or colonies on this continent, then and in every such case the charge of conveying such person or persons shall be borne by said person or persons, if able to pay the same, otherwise to be borne and paid by this province, in order to their being sent or conveyed to the province or colony where they last had a settlement; and the constable or constables of each town respectively to whom such warrant shall be directed to convey such person or persons by land, and to whose care such person or persons shall be committed, shall by virtue of said warrant receive and convey him, her or them through the county to which he belongs, and to one of the constables of the next town in the next county, who shall by virtue of said warrant receive the said person or persons, and convey him, her or them through the county in which such constable dwells, and the said person or persons shall by virtue of the warrant aforesaid be conveyed by the constable from county to county in the same manner, unto the province or colony to which he, she or they shall be first ordered; and every constable so receiving and conveying such person or persons shall receive out of the treasury of such town where he belongs so much money as the selectmen of such town shall think the charge of conveying such person or persons as aforesaid through the county shall amount to, the said constable to keep a fair account of his trouble and expense, and exhibit the same to the said selectmen, who are to consider and adjust the same; and the said selectmen are also hereby empowered and directed to adjust and pay the charge of conveying any person or persons by water as aforesaid, they to receive the same again out of the province treasury.

In what manner the charge is to be defrayed.

Selectmen to adjust the charge.

SECT. 3. And be it further enacted, that when and so often as any person or persons to be removed shall be an inhabitant or inhabitants of any town or district within this province, they shall be conveyed to such town or district where he, she or they are inhabitants or have a settlement, in the same manner as is herein before provided in cases where the persons so removed are not inhabitants of any town within this province, the charge of such conveyance to be paid as by a law of this province is already provided.

Poor persons inhabitants of the province to be conveyed to places of settlement.

SECT. 4. And be it further enacted, that from and after the tenth day of April next, no person whatsoever coming to reside or dwell within any town in this province shall gain an inhabitancy in such town by any length of time he or she may continue there without warning, unless such person

Persons removing to any town to be approved

before they gain an inhabitancy.

shall first have made known his or her desire to the selectmen thereof, and obtained the approbation of the town at a general meeting of the inhabitants for his dwelling there; nor shall any town be obliged to be at charge for the relief and support of any person residing in such town, in case he or she stand in need, that have not been approved as aforesaid; and all such persons as have not been approved as aforesaid, together with their children, whether born before or after their coming to such town in wedlock or otherwise, shall be liable to be sent or conveyed to the town where they properly belong by a warrant from a justice of the peace, who is hereby empowered, upon application from the selectmen of the town from which such person or persons are to be sent, to issue his warrant accordingly, excepting for such as are apprentices to some inhabitant or inhabitants of such town, who shall not be liable to be sent or conveyed out of any town where they are apprentices, till the time of their apprenticeship is expired; any law, usage or custom to the contrary notwithstanding.

Certificate to be on the warrant.

SECT. 5. And be it further enacted, that every constable shall, before he delivers said warrant to the constable of the next county, certify his doings thereon.

CHAPTER CCCVII.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED OR NEAR EXPIRING.

WHEREAS the several acts herein after mentioned, which are now expired or near expiring, have been found useful and beneficial, namely, one act made in the ninth year of the reign of his late majesty king George the second, entitled an act to enable the overseers of the poor and selectmen to take care of idle and disorderly persons, another act made in the fifteenth year of the same reign, entitled an act in addition to an act entitled an act for explanation of and supplement to an act referring to the poor, another act made in the twenty-sixth year of the same reign, entitled an act for further regulating the proceedings of the courts of probate within this province, another act made in the twenty-ninth year of the same reign, entitled an act in addition to the several acts and laws of this province now in force respecting poor and idle, disorderly and vagrant persons, another act made in the thirty-second year of the same reign,

entitled an act in further addition to an act entitled an act for explanation of and supplement to an act referring to the poor, also two acts made in the thirty-third year of the same reign, one entitled an act for the better regulating the choice of petit jurors, the other entitled an act in further addition to the act for limitation of actions, and for avoiding suits in law where the matter is of long standing.

Be it therefore enacted by the governor, council and house of representatives, that such of the before mentioned acts as are expired be revived, and such of the said acts as are not yet expired be continued, saving the first part of the first paragraph in the act entitled an act for the better regulating the choice of petit jurors, so far as it respects the obligation upon the selectmen to take a list before the tenth of April one thousand seven hundred and sixty, saving also a part of the last clause in the act entitled an act in further addition to an act entitled an act for explanation of and supplement to an act referring to the poor, which has relation to the late war, and that all and every other article, clause, matter and thing therein respectively contained, shall be in force until the first day of July which will be in the year of our Lord one thousand seven hundred and seventy, and no longer.

CHAPTER CCCVIII.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED AND NEAR EXPIRING.

WHEREAS the several acts herein after mentioned, which are now expired or near expiring, have been found useful and beneficial, viz. two acts made in the sixteenth year of the reign of king George the second, one entitled an act to prevent the multiplicity of lawsuits, another entitled an act in further addition to and explanation of an act entitled an act for regulating townships, choice of town officers, &c., two acts made in the twenty-fourth year of the said reign, one entitled an act providing for the support of ministers in new plantations, the other entitled an act in addition to an act for regulating fences, cattle, &c., one act made in the thirtieth year of the said reign, entitled an act for further regulating the course of judicial proceedings, one act made in the thirty-second year of the same reign, entitled an act in addi-

tion to an act entitled an act for regulating of fences, cattle, &c.

Be it therefore enacted by the governor, council and house of representatives, that such of the before mentioned acts as are expired be revived, and such of said acts as are not yet expired be continued, with all and every clause, matter and thing therein respectively contained, and shall be in force until the twentieth day of July one thousand seven hundred and seventy-two, and no longer.

CHAPTER CCCIX.

AN ACT IN FURTHER ADDITION TO THE SEVERAL ACTS FOR THE SETTLEMENT AND SUPPORT OF SCHOOLS AND SCHOOLMASTERS.

WHEREAS it may happen that, where towns or districts consist of several precincts, some of such precincts may be disposed to expend more for the instruction of children and youth in useful learning, within their own bounds, than as parts of such towns or districts they are by law held to do, and no provision has hitherto been made to enable precincts to raise money for that purpose, and whereas the encouragement of learning tends to the promotion of religion and good morals, and the establishment of liberty civil and religious,

Towns or precincts may raise more money than is by law required for the support of schools.

Assessors required to assess the money agreed to be raised.

Constables or collectors required to collect the same,

Be it therefore enacted by the governor, council and house of representatives, that when and so often as the major part of the inhabitants of any precinct, at their annual meeting legally warned, shall agree on the building, finishing or repairing of any school house, or the defraying any other charge for the support of schools and schoolmasters, and shall also agree on any sum or sums of money for such purpose or purposes, the assessors of such precinct are hereby empowered and required to assess the same on the polls and estates within the said precinct, and all such rates or assessments shall be paid to the constable or collector to whom the same shall be committed, with a warrant from said assessors, in form as by law is prescribed for collecting of town assessments; and every constable or collector to whom any such rates or assessments shall be committed, with a warrant as aforesaid, shall levy, gather, and receive the same according to the direction in the warrant to him given, and shall account for all such sums as he shall so receive, and

make payment of the same to the treasurer of such precinct, or other receiver, as by his warrant he shall be required, and be subject to the pains and penalties in case of neglect, as is by law provided in the several acts of this province, respecting the levying and collecting of other precinct assessments.

upon penalty for neglect.

CHAPTER CCCX.

AN ACT TO PREVENT A FAILURE OF JUSTICE BY MEANS OF OFFENDERS IN ANY OF HIS MAJESTY'S COLONIES ON THIS CONTINENT ESCAPING INTO THIS PROVINCE, OR FROM ONE COUNTY IN THIS PROVINCE INTO ANOTHER, TO AVOID THE PUNISHMENTS OF THEIR OFFENCES.

WHEREAS it often happens that persons who have committed criminal offences in other of his majesty's colonies, before they can be apprehended, flee into this province, and by that means, through the difficulty and delay that must generally attend a legal arrest of such offenders and sending them back for a proper trial, do escape the punishment their offences justly deserve, for preventing whereof and to render the proceedings in such cases more easy, legal, and expeditious for the future,

Justices of the peace empowered to issue their warrants against offenders, escaping from other colonies.

SECT. 1. Be it enacted by the governor, council and house of representatives, that when and so often as any criminal offender or offenders in any other of his majesty's colonies shall make his or their escape from justice, and come into this province, and any proper process shall issue against such person or persons where he or they committed such offence, and he or they shall be pursued and followed into this province, it shall be in the power of any of his majesty's justices of the peace within this province in their respective counties, on application to them made, to issue their warrant against such offender or offenders, that they may be brought before them, or some other of his majesty's justices of the peace for said county, to be examined thereon; and if they shall think proper on such examination, they may and hereby are empowered to commit, or by warrant under their hands and seals, directed to the sheriff or his deputy, or the constables of the several towns, as may be necessary, to send and convey such offender or offenders to the confines of such colony from whence they

May commit or convey such offenders to the confines of another colony.

have escaped, and there to deliver such offender to some proper officer in such colony, that they may be holden to answer for such offence according to law there; and, where it shall be necessary such offender be conveyed through several counties in this province, in order for his being returned to the colony where he offended as aforesaid, every of his majesty's justices of the peace in their several and respective counties shall be, and they are hereby empowered by warrant as aforesaid, to order and direct the conveyance of such offender through their several counties towards the place where he offended.

And for the furtherance of justice in the most easy and expeditious manner, where such offenders in any one county in this province shall escape into any other county in the same,

A justice of peace may act in the same manner with respect to offenders, escaping from another county.

SECT. 2. Be it further enacted, that when and so often as any justice of the peace in any county within this province, on complaint to him made, shall issue his warrant against any criminal offender for any offence committed in such county, and the said offender shall have escaped into any other county, it shall be in the power of any justice of the peace, in such county where such offender is, to proceed in the same method in apprehending such offender, and sending him back for trial to the county from whence he came, as in the case aforesaid, where the offender shall have come from another colony.

CHAPTER CCCXI.

AN ACT FOR PREVENTING AND PUNISHING BURGLARY, AND FOR REPEALING ONE ACT, ENTITLED AN ACT AGAINST BURGLARY.

WHEREAS the provision made by the act against burglary has been found ineffectual for answering the purposes thereby intended,

SECT. 1. Be it therefore enacted by the lieutenant governor, council and house of representatives, that the act or law of this province made and passed in the first year of king George the first, entitled an act against burglary, and every clause thereof, be, and the same is hereby repealed and made void for ever.

And for the more effectually punishing of said offence for the future,

Entering a dwelling-house in the night, death without benefit of clergy.

SECT. 2. Be it further enacted, that if any person or persons shall in the night time break and enter any dwelling-house, with intent to kill, rob, steal, commit rape, or to do or perpetrate any felony, the person or persons so offending, and being thereof convict, shall suffer the pains of death without benefit of clergy.

Entering in the day time and breaking out in the night, death without benefit of clergy.

SECT. 3. And be it further enacted, that if any person or persons shall enter into the dwelling house of another by night or by day without breaking the same, if such entry shall be made with intent to kill, rob, steal, commit rape, or perpetrate any felony, and shall in the night time break the said house to get out of the same, the person or persons so offending, and being thereof convict, shall suffer the pains of death, without benefit of clergy; any law usage or custom to the contrary of this act, or of any thing therein contained, notwithstanding.

CHAPTER CCCXII.

AN ACT IN ADDITION TO AN ACT MADE AND PASSED IN THE ELEVENTH YEAR OF THE REIGN OF KING WILLIAM THE THIRD, ENTITLED AN ACT FOR SUPPRESSING AND PUNISHING OF ROGUES, VAGABONDS AND COMMON BEGGARS, AND OTHER LEWD, IDLE AND DISORDERLY PERSONS, AND FOR SETTING THE POOR TO WORK.

WHEREAS the execution of an act made and passed in the eleventh year of the reign of king William the third, entitled an act for the suppressing and punishing of rogues, vagabonds, common beggars, and other lewd, idle and disorderly persons, and also for setting the poor to work, is oftentimes rendered very difficult by reason of the distance of the place where such persons are found and taken up from the house of correction to which they are directed by said act to be sent in order for punishment, by means whereof such persons often escape without any punishment, and thereby many such disorderly persons are encouraged to come from distant parts into this province, whereby his majesty's good and industrious subjects here are frequently burdened and imposed on by such vagrant, idle and disorderly persons,

For the more effectual preventing whereof for the future,

Court of sessions and one or more jus-

Be it enacted by the lieutenant governor, council and house of representatives, that henceforward it shall be in the power of the court of general sessions of the peace, in

tices of the peace out of court empowered to punish vagabonds, &c.

any county within this province, and of one or more justices of the peace out of court, at his discretion, either to send and commit to the house of correction all such persons as said court or justice might send or commit thereto by the provision of said act, or otherwise punish them by setting in the stocks not exceeding three hours, or by whipping not exceeding ten stripes; any law, usage or custom to the contrary notwithstanding.

CHAPTER CCCXIII.

AN ACT IN FURTHER ADDITION TO AN ACT, ENTITLED AN ACT FOR MAKING OF LANDS AND TENEMENTS LIABLE TO THE PAYMENT OF DEBTS.

WHEREAS in and by an act, entitled an act for the making of lands and tenements liable to the payment of debts, it is provided that where the goods and chattels belonging to the estate of any person deceased shall not be sufficient to answer the just debts which the deceased owed or legacies given, upon representation thereof, and making the same to appear unto the superiour court of judicature holden for or within the county where such deceased person last dwelt, the said court are empowered to license and authorise the executor or administrator on such estate to make sale of all or any part of the houses and lands of the deceased, so far as shall be necessary to satisfy the just debts which the deceased owed at the time of his death, and legacies bequeathed in and by the last will and testament of the deceased, and as it has been found by experience that the authority to license the sale of real estates given to the said court by the said acts, having been thereby limited and restrained to that particular county where such deceased person last dwelt, has been found much to retard the settlement of such estates, and greatly to delay the payment of the debts due therefrom, and to occasion many expensive lawsuits,

Therefore for the preventing such inconveniences for the future, and for the furtherance of the original intent of the said act,

Superiour court empowered to license the sale of real es-

SECT. 1. Be it enacted by the lieutenant governor, council and house of representatives, that in all cases where the said superiour court by the said act are empowered to license and authorise the sale of any real estate, the said court henceforward and hereby are fully empowered to give

and grant such license and authority in any term or sitting of the said court in any county within this province, upon application made to the said court for the same, whether the county where such application is made be the same county where such deceased person dwelt or not. tates to pay debts of persons deceased, in any county.

Sect. 2. And be it further enacted, that the justices of any of the inferiour courts of common pleas for any of the counties within this province are also fully empowered and authorised hereafter, on application to them made at any session of such court, to give and grant license and authority for the sale of any real estate of any person deceased, lying within the county for which such court shall be held, in all such cases where the said superiour court by the abovesaid act has been heretofore empowered to grant such license; and that all executors or administrators who may hereafter obtain such license and authority, either from the superiour court or any inferiour court of common pleas, shall in executing the same in all things conform to the directions of the laws of this province which respect the sale of lands under license of the superiour court, mentioned in the act in addition whereto this act is made. Inferiour courts empowered to license sale of real estates to pay debts of persons deceased, in their respective counties.

CHAPTER CCCXIV.

AN ACT FOR REPEALING THE SEVERAL LAWS NOW IN FORCE WHICH RELATE TO THE LIMITATION OF PERSONAL ACTIONS, AND FOR THE LIMITATION OF PERSONAL ACTIONS FOR THE FUTURE, AND FOR AVOIDING SUITS AT LAW.

Sect. 1. Be it enacted by the lieutenant governor, council and house of representatives, that the several laws, and the several paragraphs and clauses of all and every of the laws of this province heretofore made and enacted, any ways relating to the limitation of personal actions, be, and hereby are repealed and declared null and void, and shall never hereafter be pleaded or pleadable in bar of any action brought or to be brought.

And for avoiding suits in law,

Sect. 2. Be it further enacted, that all actions of trespass, quare clausum fregit, all actions of trespass, detinue, action sur trover and replevin for taking away goods and cattle, all actions of account and upon the case, other than such accounts as concern the trade of merchandize between Actions described.

merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty, all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought at any time after the first day of December one thousand seven hundred and seventy, shall be commenced and sued within the time and limitation hereafter expressed, and not after, that is to say, the said actions upon the case other than for slander, and the said action of account, and the said actions of trespass, debt, detinue and replevin for goods or cattle, and the said action of trespass, quare clausum fregit, within six years from the first day of December one thousand seven hundred and seventy, or within six years next after the cause of such actions or suits, and not after; and the said actions of trespass, of assault, battery, wounding, imprisonment, or any of them, within one year next after the first day of December aforesaid, or within four years next after the cause of such actions or suits, and not after; and the said actions upon the case for words within one year after the first day of December aforesaid, or within two years next after the words spoken, and not after.

How limited.

Sect. 3. And nevertheless, be it enacted, that if in any of the said actions or suits judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, that in all such cases, the party plaintiff, his executors or administrators, as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed, or such judgment given against the plaintiff, and not after.

A new action may be commenced in certain cases.

Sect. 4. And be it further enacted, that in all actions of trespass, quare clausum fregit, hereafter to be brought, wherein the defendant or defendants shall disclaim in his or their plea to make any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence, or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought, whereupon or upon some of them, the plaintiff or plaintiffs shall be enforced to join issue, and if the said issue be found for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited, the plaintiff or plaintiffs shall be clearly barred from the said action or actions, and all other suit concerning the same.

A disclaimer allowed in certain cases.

Sect. 5. And be it further enacted, that in all actions upon the case for slanderous words, all actions of assault and

battery, all actions for false imprisonment, and all actions for malicious prosecution, to be sued or prosecuted in any of the courts of record within this province, if the jury upon the trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such actions shall have and recover only so much costs as the damages so found or assessed amount unto, without any further increase of the same.

Costs limited to the sum recovered in damages when under forty shillings.

Provided always, and be it further enacted, that this act shall not be understood to bar any infant, feme covert, person imprisoned, beyond the seas, or non compos mentis, from bringing either of the actions before mentioned within the term before set and limited for bringing such action, reckoning from the time that such impediment shall be removed.

Infants, &c. not barred.

Sect. 6. And be it further enacted, that if any person or persons against whom there is, or shall be any such cause of suit, or action of trespass, detinue, action sur trover or replevin for taking away goods or cattle, or of action of account, or upon the case, or of debt grounded upon any lending or contract without specialty, of debt for arrearages of rent, or assault, menace, battery, wounding and imprisonment, or any of them, be or shall be, at the time of any such cause of suit or action given, or accrued, fallen or come, without this province, that then such person or persons, who is or shall be entitled to any such suit or action, shall be at liberty to bring the said actions against such person and persons, after their coming or return in this province, so as they take the same, after their coming or return into this province, within such times as are respectively limited for the bringing of the said actions before by this act.

Actions against persons without the province may be brought within the limited time after their return.

Sect. 7. Provided always, and be it further enacted, that this act shall not extend, or be construed to extend to limit or bar any action upon the case hereafter to be brought upon any note in writing, made and signed by any person or persons, and attested by one or more witnesses, whereby such person or persons have promised or shall promise to pay to any other person or persons any sum of money mentioned in such a note, but all action or actions upon any such note or notes shall be maintained and maintainable as if this act had never been made; any thing herein contained to the contrary notwithstanding.

Proviso with regard to notes of hand witnessed.

CHAPTER CCCXV.

AN ACT IN ADDITION TO AND EXPLANATORY OF THE SEVERAL LAWS ALREADY MADE RELATING TO THE REMOVAL OF POOR PERSONS OUT OF THE TOWNS WHEREOF THEY ARE NOT INHABITANTS.

Recital.

WHEREAS in and by an act, made in the fourth year of the reign of their majesties king William and queen Mary, entitled an act for regulating of townships, &c. it is among other things enacted, "that any person orderly warned to depart any town whereof he is not an inhabitant, and neglecting so to do by the space of fourteen days next after such warning given, may by warrant of the next justice of the peace be sent and removed from constable to constable unto the town where he properly belongs or had his last residence," and by another act, passed in the seventh year of his present majesty's reign, relative to the removal of poor persons out of the towns whereof they are not inhabitants, it is among other things enacted, "that when and so often as any such person or persons are to be sent or conveyed out of this province, it shall and may be lawful for any justice of the peace of the county from whence the person or persons are to be sent or conveyed, and he is hereby empowered to grant a warrant for sending such person or persons out of the province either by land or water, as he shall think will be most convenient or least liable to charge," and whereas the courts of general sessions of the peace for several counties have lately construed the aforementioned acts in such a manner as to adjudge, that the removal of any person from the town of which he is not an inhabitant, by virtue of a warrant from a justice of the peace residing in the same town, is illegal, whereby a number of towns in the province, more especially the town of Boston, have been put to much inconvenience and charge, and the expense of the province is likely to be greatly increased, for prevention thereof,

Justices empowered to remove persons.

Be it enacted by the governor, council and house of representatives, that from and after the publication of this act the removal of any person, by a warrant obtained from one of his majesty's justices of the peace residing in the town from whence the person is to be sent or conveyed to any other town either in or out of the province, shall to all intents and purposes be deemed as legal a removal as if the warrant had issued from a justice of the peace, living in

any other town, and the charge arising thereupon borne and defrayed agreeable to the former acts herein referred to.

CHAPTER CCCXVI.

AN ACT TO ENABLE SHERIFFS, DEPUTY-SHERIFFS, CORONERS AND THEIR DEPUTIES AND CONSTABLES TO MAKE SALE OF GOODS AND CHATTELS TAKEN BY EXECUTION.

WHEREAS a question has arisen upon the power of sheriffs, deputy-sheriffs, coroners and constables respecting the making sale of goods and chattels taken by execution,

Be it enacted by the governor, council and house of representatives, that all sheriffs, deputy-sheriffs, coroners and their deputies and constables, are hereby empowered to make sale at a publick vendue of all goods and chattels taken by virtue of execution for the satisfaction of the same, notice of such sale being posted up in some publick place or places in the town wherein such sale shall be made, four days beforehand, and the overplus of the proceeds thereof, if any there be, over and above the reasonable charges of taking and keeping them, which charge of taking and keeping shall be endorsed on the execution, with their fees, to be immediately restored to the owner or owners upon his or their demanding the same.

Sheriffs and other officers empowered to sell goods and chattels taken by execution, giving four days notice.

Overplus to be restored to the owner.

CHAPTER CCCXVII.

AN ACT IN ADDITION TO AN ACT, ENTITLED AN ACT TO PREVENT FRAUD IN CORD WOOD EXPOSED TO SALE.

WHEREAS in and by an act made and passed in the fourth year of her late majesty queen Anne, entitled an act to prevent fraud in cord wood exposed to sale, it is enacted that all cord wood exposed to sale shall be four feet long, accounting to half the carf, and the cord being well and close laid together shall measure eight feet in length and

four feet in height, notwithstanding which great frauds and abuses have for several years past, and still are daily committed in bringing to many towns in this province, and there exposing to sale great quantities of fire wood, commonly called cord wood, not more than three feet or three feet and a half long, whereby the inhabitants of such towns, and especially the poor thereof, are greatly injured and defrauded, there being no penalty annexed by said law to such persons as are guilty of the breach thereof,

For remedy whereof, and for preventing the like abuses for the future,

Wood not four feet in length to be forfeited.

SECT. 1. Be it enacted by the governor, council and house of representatives, that if any fire wood, or wood designed for fuel commonly called cord wood, which be less in length than four feet including half the carf as aforesaid, shall after the first day of August next be brought by water into any towns of this province for sale, such wood shall be forfeited, two third parts thereof to the use of the poor of the town, and the other third part thereof to the sealer of wood, who shall seize the same accordingly.

Selectmen to appoint measurers and sealers of wood under oath.

SECT. 2. And be it further enacted, that in every town or district within this province, where wood is usually sold by the cord, the selectmen shall annually, or as occasion shall require, nominate and appoint some meet persons to be measurers and sealers of wood, who shall be sworn in like manner as other town officers to the faithful and diligent discharge of their office, and the selectmen shall from time to time appoint such fees or allowance for their service as they shall judge reasonable.

Wharfinger or carter forbid to cart wood, except for their own use, that is less than four feet long, and measured by the officer, on penalty of 6s.

SECT. 3. And be it further enacted, that no wharfinger or carter shall, by himself or any for or under him, cart or carry any fire wood, or wood commonly used or intended for fuel, from any wharf or landing place in any town in this province, except for the proper use and consumption of such wharfinger or carter, that shall not be four feet in length, including half the carf, and until it hath been first measured by the officer appointed by the selectmen as aforesaid, on penalty of forfeiting and paying six shillings for every load of wood so carried off, and every wharfinger shall be chargeable to the officer or person appointed to measure wood as aforesaid for his fees, if demanded, and be compelled by law to pay him the same.

And whereas frequent complaints are made that such of the inhabitants of the town of Boston as are poor, and usually purchase their fire wood and charcoal in small quantities, are greatly defrauded in their measure, and not having the quantity bought,

For preventing whereof, and for ascertaining the quantity of wood and charcoal bought,

SECT. 4. Be it enacted, that each cart or sled employed by any wharfinger or common carter belonging to the town of Boston be so marked and numbered by the sealer of wood on some proper part of such cart or sled, as that it may thereby be known and seen what quantity of wood such cart or sled will contain and carry, and the marks and number of each cart or sled shall be registered by the town clerk of said town; and no wharfinger or carter aforesaid shall presume to carry any wood unless for his own fire in any cart or sled that shall not have been so marked, numbered and registered, and that shall not have at the time of such carrying the marks and number remaining visible thereon.

Carts and sleds to be marked and numbered, and registered by the town clerk.

Provided nevertheless, and it is the true intent and meaning of this act, that when any person purchases a quantity of fire wood for his own burning, and lands it on any wharf or landing besides a common wharfinger's, he may employ any cart or carts to carry off the same, saving only that such carter shall not carry within the town of Boston more than six feet at a time, under the penalty of six shillings for each offence; and no greater quantity than six feet shall within the town of Boston be carried at any one time, and every person offending in either of the particulars aforesaid shall forfeit and pay the sum of six shillings for each offence; and if any dispute shall arise between the buyer and seller as to the quantity of wood delivered, and the quantity bought or agreed for, and if on cording and scaling the same at the place of delivery it shall appear there is not the quantity of wood delivered which was bought or agreed for, the seller shall pay the buyer the costs of carting and sealing the wood the second time, as also the sum of four shillings for each offence.

Penalty for carting more than six feet of wood at a time in the town of Boston.

Disputes between buyer and seller about the quantity of wood, how settled.

SECT. 5. And be it further enacted, that all baskets used and improved in measuring charcoal brought into any town for sale shall contain two bushels, and be of the following dimensions, viz. seventeen inches and a half deep, measuring from the top of the basket to the highest part of the bottom, and nineteen inches in breadth in every part thereof, and that the basket be well heaped, and also be sealed by the sealer of the town where the person so using and improving the same shall usually inhabit or reside, and every person who shall measure the charcoal in any basket of less dimensions, or not sealed as aforesaid, shall forfeit and pay for each offence the sum of three shillings, and the said basket shall be destroyed.

Dimensions of charcoal baskets.

To be sealed.

Penalty if neglected.

Provided nevertheless, that no person shall be obliged to measure charcoal where the quantity shall be agreed upon by the buyer and seller.

Proviso.

SECT. 6. And be it further enacted, that the selectmen of any town where coal is usually sold, or the major part of them, be and hereby are fully empowered to appoint, as oc-

Selectmen empowered to ap-

point persons to prosecute offenders.

Forfeiture, how to be recovered.

Persons aggrieved, liberty of appeal.

casion shall require, such meet person as they shall judge proper for seizing and securing all baskets improved for measuring coal, that are not of the dimensions aforementioned, and sealed as aforesaid, and prosecute such person or persons as shall be guilty of the breach of this act; all fines and forfeitures arising on the breach of this act, those forfeitures herein beforementioned which are otherwise appropriated being excepted, may be recovered by action, bill, plaint, information or presentment of the grand jury in any court of record, or before any of his majesty's justices of the peace, according to the nature of the offence, one moiety thereof shall be for the informer, and the other moiety for the use of the poor of the town where the offence shall be committed, saving to any person aggrieved by any judgment or sentence for a breach of this act his right and liberty of appeal to the court proper to try the same on appeal, in the county where the offence shall be committed.

CHAPTER CCCXVIII.

AN ACT FOR ESTABLISHING A LINE OF JURISDICTION BETWEEN THE COUNTY OF SUFFOLK AND THE COUNTIES OF PLYMOUTH AND BRISTOL, SO FAR AS THE LINE HEREAFTER DESCRIBED SHALL EXTEND.

WHEREAS the line of jurisdiction between the county of Suffolk and the counties of Plymouth and Bristol is uncertain, whereupon disputes and controversies have arisen and may arise, for preventing of which,

Bounds of Suffolk, Plymouth and Bristol line.

Be it enacted by the governor, council and house of representatives, that for the future a line beginning at a certain heap of stones on the west side of and within five or six feet or thereabouts of a pond called Accord pond, being a known and anciently reputed bound between the town of Hingham and the town of Abington, and running from said monument west twenty degrees and a half south, leaving the towns of Weymouth, Braintree, Stoughton and Wrentham adjoining on the north, and Abington, Bridgewater Mansfield and Attleborough on the south, to a certain old white oak tree anciently marked, now standing and being a boundary between the towns of Wrentham and Attleborough, by some called Station tree, and by others called Angle tree, shall for ever hereafter be the bounds between the county of Suffolk

and the counties of Plymouth and Bristol so far as said line extends, any law, usage or custom to the contrary notwithstanding.

Provided always, and it is hereby enacted and declared, that nothing in this act shall be construed to determine or have any influence in the determination of the property of any lands bounded on a line settled in the year one thousand six hundred and sixty-four by commissioners from the colonies of Massachusetts and New Plymouth, as a line of jurisdiction and property between the colonies, but that the courts of common law shall be at as full liberty to adjudge and determine the bounds and property of such lands as if this act had never been passed. Proviso respecting a line in 1664.

CHAPTER CCCXIX.

AN ACT IN FURTHER ADDITION TO AN ACT, ENTITLED AN ACT FOR THE ORDERLY CONSUMMATING OF MARRIAGES, MADE AND PASSED IN THE FOURTH YEAR OF THEIR LATE MAJESTIES KING WILLIAM AND QUEEN MARY.

WHEREAS the ministers of the church of England within this province have no power by law to join persons in marriage who do not belong to the towns in which such ministers themselves dwell,

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that from and after the twentieth day of March one thousand seven hundred and seventy-three, it shall be lawful for any minister of the church of England to join any person in marriage that may lawfully enter into such a relation, who usually and frequently attend the worship of God with such minister on Lord's days, the ministerial taxes of which persons he has a right by law to receive, although such persons do not belong to the town in which such minister himself dwells, provided they produce a certificate to such minister of their having been published agreeable to the laws of this province. Ministers of the church of England may join persons in marriage that belong to other towns besides that in which they reside.

SECT. 2. Be it further enacted, that where any minister of the church of England is himself to be married, or where such minister shall be removed by death or otherwise, so that the religious society of Christians in which he presided shall be destitute of a minister, it shall be lawful in such cases for the next minister within the province of the same May join in marriage persons that do not attend their

ministry, in cases.

denomination to join in marriage the minister, or any of the people constituting such religious society, who may lawfully enter into such a relation, when they may become destitute as aforesaid, certificates of publishment, agreeable to the laws of this province, being first produced as aforesaid.

And whereas the treasurers of the counties, who only are appointed to sue for and recover the fine of fifty pounds forfeited by such as presume to join persons in marriage contrary to the laws of this province, have been negligent of their duty, and more effectual provision is necessary to be made,

The fine for marrying contrary to law may be sued for by parents, guardians, selectmen, &c.

SECT. 3. Be it further enacted, that every justice, minister or other person who shall solemnize marriages contrary to this or any former act now in force, shall not only be liable to the suit or action of the parent, guardian or others, whose immediate care and government either of the parties were under at the time of such marriage, for the recovery of damages, but such parent, guardian or others, whose immediate care and government either of the parties were under, or either of the selectmen of the town where such offence may be committed, shall have, and there is hereby given them as full and ample power to sue for and recover the fine aforesaid as the county treasurers respectively now have, the same to be recovered in like manner and to be applied to the same purpose as is by law already provided.

CHAPTER CCCXX.

AN ACT IN ADDITION TO AN ACT, ENTITLED AN ACT TO LIMIT AND DIRECT IN SUING OUT EXECUTIONS UPON JUDGMENTS OF COURTS.

WHEREAS in and by an act, made and passed in the sixteenth year of his late majesty king George the second, entitled an act to limit and direct in suing out executions upon judgments of courts, it is enacted, "that when judgment shall be given in any court of record, the party obtaining it may sue out execution thereon at any time within a twelvemonth, and afterwards renew it as often as occasion shall require, and where any execution shall be returned without any satisfaction made, or satisfied only in part, the clerk of the said court, within a twelvemonth after the return thereof into the office, may ex officio renew or make

out an alias or pluries execution for the whole or the remainder as the case may be, till the judgment be fully satisfied, but if the party shall neglect to sue out his execution, alias or pluries, within the times afore limited, he shall sue out a writ of scire facias, and cause the adverse party to be served therewith, or an attested copy thereof to be left at his dwelling or place of usual and last abode, seven days inclusive, before the court's sitting, requiring him to shew cause, if any he have, why execution ought not to be done, and upon his non-appearance, or not shewing sufficient cause, the court shall award execution for what remaineth with additional cost," and whereas also when judgment is rendered, if the party obtaining it dies, no execution can be sued out thereon, without a writ of scire facias being first brought and prosecuted with effect, and because upon a writ of scire facias neither the goods or estate of the debtor can be attached, nor his body taken, the debt may be lost,

Be it enacted by the governor, council and house of representatives, that when judgment is given in any court of record and remaineth in force, the party obtaining it, his or their executors or administrators may, instead of a writ of scire facias, have and maintain an action of debt upon such judgment in the same court where the record thereof remaineth.

Method for regulating executions.

CHAPTER CCCXXI.

AN ACT FOR SECURING THE SEASONABLE PAYMENT OF TOWN, DISTRICT, AND PRECINCT RATES OR ASSESSMENTS.

WHEREAS the method directed to by law, and heretofore practised by the receivers or treasurers of towns, districts and precincts, has been to sue for and recover town, district and precinct rates and assessments, or the arrears thereof, by mean process against the constables or collectors, to whom they were committed to be gathered, who neglected their duty therein, whereby the payment of such rates or assessments into the respective town, district or precinct treasurers has been greatly delayed to the grievous damage of many places, to prevent which for the future,

SECT. 1. Be it enacted by the governor, council and house of representatives, that if the constable or collector of any town, district or precinct within this province, to whom any town, district or precinct rates or assessments have been, or

Town treasurers empowered to issue warrants against constables and collectors that are deficient in collecting rates.

may hereafter be committed to collect, shall be remiss in his duty by law required, and neglect to collect such rates and assessments as have been, or may hereafter be committed to him to collect, and pay the same to the receiver or treasurer of such town, district or precinct by the time fixed in the warrant to him directed, or within one month next after the expiration thereof, such treasurer or receiver is hereby empowered, by warrant under his hand and seal, directed to the sheriff of the county or his deputy where said delinquent constable or collector may reside, and in all cases wherein such delinquent constable or collector may happen to be a sheriff or deputy-sheriff, then such treasurer or receiver may direct such warrant to the coroner of such county or his deputy, who are hereby respectively directed and empowered to execute the same, to cause such sum or sums of money, as such constable or collector has not paid in, to be levied by distress and sale of his real and personal estate, and such coroner or his deputy is hereby authorised and empowered to give a good title to the same, returning the overplus if any be, notice of such sale being posted up in some publick place or places in the town or district wherein such estates shall or may be found, four days at least before the time of such sale, and for want of such estate to take the body of such constable or collector, and to imprison him until he pay the same.

Warrants returnable to the treasurer in three months.

SECT. 2. And be it further enacted, that all warrants that shall hereafter be issued by any treasurer as aforesaid, against any constable or collector as aforesaid, shall be made returnable and shall be returned accordingly, together with the monies he hath received or may receive thereon, if any, unto said treasurer or into his office within three months from the day of the date of said warrant, on penalty of eighteen per cent. per annum from the expiration of the said three months.

And whereas some doubts have arisen, whether a constable or precinct collector has power to collect the taxes to him committed within such precincts as consists of inhabitants who belong to different towns, in those parts of such precincts of which town such constable or collector is not an inhabitant,

Constable or precinct collector empowered.

SECT. 3. Be it enacted, that every constable or precinct collector shall have the same power to collect the taxes to him committed in every part of such precinct as consists of inhabitants belonging to different towns, as fully as if such precinct was contained in the same town of which such constable or collector is an inhabitant.

SECT. 4. And be it further enacted, that the warrant to be issued by any of the treasurers or receivers aforesaid shall be in the form following, viz.

B. ss.

A. B. treasurer of the of B. in said county, to the sheriff of the county of S. or his deputy, Greeting.

[L.S.]

Form of town treasurer's warrant.

Whereas C. D. of B. aforesaid [addition] on the day of being a of rates and assessments granted and agreed on by the aforesaid, had a list of assessments duly made by the assessors of the aforesaid, amounting unto the sum of committed to him, with a warrant under their hands and seals, directing and empowering him to collect the several sums in said assessments mentioned, and pay in the same to the treasurer of aforesaid by the day of but the said C. D. has been remiss in his duty by law required, and hath neglected to collect the several sums aforesaid, and pay the same to the treasurer of the aforesaid, and part thereof, viz. still remains due, and the said C. D. still neglects to pay the same,

You are hereby in his majesty's name required forthwith to levy the aforesaid sum of by distress and sale of the said C. D. real or personal estate, and pay the same unto the treasurer of said returning the overplus, if any there be, to the said C. D. and for want of such estate to take the body of the said C. D. and commit him to his majesty's gaol in the county aforesaid, there to remain until he has paid the said sum of with your fees, or that he be otherwise discharged by order of law, and make return of this warrant to myself or my successor as treasurer of said .

Given under my hand and seal this day of in the year of his majesty's reign, annoque Domini .

A. B.

CHAPTER CCCXXII.

AN ACT TO ENABLE PERSONS TO BRING FORWARD AND MAINTAIN ACTIONS OF DEBT IN THE EXECUTIVE COURTS WITHIN THIS PROVINCE UPON JUDGMENTS RECOVERED IN THE NEIGHBOURING GOVERNMENTS, AND UPON JUDGMENTS RECOVERED BEFORE JUSTICES OF THE PEACE IN THIS PROVINCE.

WHEREAS it frequently happens that persons against whom final judgments of court are recovered in the neighbouring governments remove with their effects into this province, without having paid or satisfied such judgments, and upon actions of debt upon such judgments brought in the executive courts in this province, the record of such judgments cannot be removed into the said courts in this province, and it has been made a doubt whether by law such judgments can be admitted as sufficient evidence of such judgments, whereby honest creditors are often defrauded of their just demands by negligent and evil minded debtors, for the prevention whereof,

Judgment recovered in any of the neighbouring colonies to be prosecuted in this province.

SECT. 1. Be it enacted by the governor, council and house of representatives, that where any person or persons heretofore have recovered or hereafter shall recover a judgment or judgments in any court in any or either his majesty's neighbouring colonies in America, and the person or persons, against whom such judgment or judgments has been or shall be recovered, has removed or shall hereafter remove into or reside within this province, or where such person or persons, against whom such judgment or judgments have been or may be recovered in the colonies aforesaid, have heretofore acquired or hereafter shall acquire any real or personal estate within this province, that then and in every such case it shall and may be lawful for such creditor or creditors, who have so recovered or shall hereafter recover a judgment or judgments as aforesaid, to bring forward, support and maintain an action or actions of debt upon such judgment or judgments so recovered, or that shall be recovered in the neighbouring colonies as aforesaid, in any executive court within this province proper to try the same, in such way and manner as he or they might have done, if such judgment or judgments had been originally recovered in the executive court in this province where said action of debt shall be brought.

SECT. 2. And be it further enacted, that upon a plea of nul tiel record or any other plea or pleas which may and

shall be made in such action or actions of debt so to be brought upon such judgment as aforesaid, a true copy of the record and proceedings of the said court or courts in the said neighbouring colony or colonies, according to the custom and usage of the colony where said judgment or judgments were or shall be recovered, attested under the hand of the clerk of the court where said judgment was or shall be recovered, or under the hand of the justice where the judgment was or shall be recovered before a justice of the peace of such government, shall be to all intents and purposes as good and sufficient evidence of such judgment, and have the same effect and operation, as if the original judgment and proceedings had been rendered and had in the court where such action of debt shall be brought and depending.

A copy of the record of the proceedings in the neighbouring colonies to be sufficient evidence in any court in this province.

And whereas it may frequently happen that persons, against whom judgments have been or hereafter shall be recovered before his majesty's justices of the peace in this province, have removed or hereafter may remove and depart from the county in which such judgments were or shall be recovered into some other county in this province, without paying or any wise satisfying such judgments, and whereas it is often necessary that actions of debt upon judgments heretofore recovered or that hereafter may be recovered before justices of the peace in this province should be brought and prosecuted in the inferiour courts of common pleas in this province, for which there is no provision in the law,

Sect. 3. It is therefore hereby further enacted, that when it shall happen that any person or persons, against whom a judgment has been or shall be had and recovered before any of his majesty's justices of the peace within this province, does and shall dwell and reside in any other county in this province, then and in every such case it shall and may be lawful for the justice, before whom such judgment was or shall be recovered as aforesaid, to direct any execution or executions issuing upon such judgments to the proper officer of such county where such person or persons against whom such judgment has been or shall be recovered as aforesaid does or shall dwell or reside; and such officer to whom such execution or executions shall be directed as aforesaid shall be and hereby are fully authorised, empowered and directed to execute and return such writs of execution accordingly; and when it shall be necessary for any person or persons in this province to bring forward and prosecute any action or actions of debt in any of his majesty's inferiour courts of common pleas in this province upon a judgment recovered before any justice of the peace in this province, it shall and may be lawful for such person to prosecute and maintain the same actions of debt in said inferiour courts; and a copy of such judgment, attested under the hand of the justice by whom such judgment has

Provision in case of debtors removing from the county where judgment has been recovered to another county.

Action to be recovered in the inferiour court, upon judgment recovered before any justice of the peace.

been or shall be rendered, shall be as sufficient evidence of such judgment and have the same effect to all intents and purposes as if the original record of said judgment was then before the same court; any law, usage or custom to the contrary notwithstanding.

CHAPTER CCCXXIII.

AN ACT FOR THE SAFE KEEPING OF THE RECORDS OF PROPRIETORS OF LANDS BROUGHT TO SEVERALTY, WHICH HAD BEEN BEFORE HELD IN COMMON.

WHEREAS the laws of this province have made provision and empowered the proprietors of land lying in common and undivided "to manage, improve and divide the same in such way and manner as hath been or shall be concluded and agreed on by the major part of the interested," and "by a major vote to choose a clerk to enter and record all votes and orders that from time to time shall be made and passed in the proprietors' meetings," but no provision is made for the preservation and safe keeping of such proprietors' records after they have made a full and complete division of their lands lying in common and undivided, and reduced the same to severalty, for remedy whereof for the future,

Clerk chosen by the proprietors of undivided lands, to execute his office notwithstanding the division.

SECT. 1. Be it enacted by the governor, council and house of representatives, that the last clerk chosen by the proprietors of any common and undivided land in this province, who are or have been or may hereafter be empowered by law to hold meetings, choose a clerk and other officers, shall continue to execute the office of clerk to which he was appointed, notwithstanding the final and total division of the lands said proprietors held in common, as fully to all intents, constructions and purposes whatsoever, as though there was no such division made.

Provision in case of the decease of the clerk.

SECT. 2. And be it further enacted, that whensoever it shall so happen that the clerk of any such propriety, after the final division of their lands held in common, or the clerk of any propriety where the proprietors shall cease any further division, shall die, or is already dead, or where such clerk shall otherwise be unable to act as clerk, or where any clerk who shall be chosen as in and by this act is hereafter provided shall die, remove, or be otherwise unable to act as clerk, then and in such case it shall and may be law-

ful for the owners of such land held in severalty, which originally was held in common, from time to time to call a meeting of such owners of land held in severalty, which meeting shall be called in the same manner as is provided in an act made in the twelfth year of the reign of her late majesty queen Anne, entitled an act directing how meetings of proprietors of lands lying in common may be called, who when met shall have power by the major vote of the owners present at such meeting, the vote being determined according to the interest, to choose a moderator and clerk, which clerk so chosen shall be under oath for the faithful discharge of his office, and shall have power to demand and receive such proprietors' books and other papers in the hands of the former clerk, or in whosoever hands they may be found; and said clerk so chosen shall be empowered to give and attest copies of the records in such books entered, or original papers in his hands, which copies shall be as good and valid in law as attested copies under the hand of the clerk chosen by the tenants or proprietors of land held in common.

Owners how to call a meeting of the proprietors.

Clerk empowered to give attested copies.

CHAPTER CCCXXIV.

AN ACT TO CONFIRM AND ESTABLISH THE RESOLVES OF THE SEVERAL PROVINCIAL CONGRESSES OF THIS COLONY.

WHEREAS this oppressed colony has for many months past been deprived of the free exercise of its usual powers of government, which has necessarily occasioned the publick business thereof to be conducted by congresses, and as many matters of the greatest importance for the recovery and preservation of that liberty, which God, nature and compact have given to this people, have been resolved, done and transacted by provincial congresses, some of which have not yet had their full effect, and whereas the legality of such resolves, doings and transactions may hereafter be called in question, and may occasion much litigation, unless confirmed and established in some known constitutional manner,

SECT. 1. Be it therefore enacted by the council and house of representatives of this colony in general court assembled, and by the authority of the same, that all and every the resolves, doings and transactions of the several provincial congresses of this colony, from and after the fourth day of

Doings of the provincial congresses confirmed.

October one thousand seven hundred and seventy-four, to the twentieth day of July one thousand seven hundred and seventy-five, be, and they hereby are confirmed and established as lawful and valid to all intents, constructions and purposes whatsoever, as fully and effectually as if the same resolves, doings and transactions had been done by any general court or assembly of this colony.

Records of them to be given in evidence under the general issue.

SECT. 2. And be it further enacted by the authority aforesaid, that whenever any person or persons shall be sued or prosecuted before any superiour court of judicature, court of assize and general gaol delivery, or before any inferiour court of common pleas, or any court of general sessions of the peace, or before any single magistrate, for any thing done in obedience to or in compliance with any of the resolves, doings, recommendations or other proceedings of said congresses, such person or persons shall and may give this act, and the record of the resolves, doings and transactions of the several provincial congresses aforesaid in evidence under the general issue; and the same thus given in evidence shall avail to all intents and purposes as if the same were specially pleaded, any law, usage or custom to the contrary notwithstanding.

To be lodged in the secretary's office, who shall give out attested copies of them.

SECT. 3. And be it further enacted by the authority aforesaid, that the records of the resolves, doings and transactions of the several provincial congresses aforesaid, be immediately lodged and for ever hereafter kept in the secretary's office of this colony, and that the secretary shall copy and authenticate all such records of said resolves, doings and transactions as shall be demanded of him to be used in any of the courts aforesaid, which copies so authenticated shall be received as full evidence in said courts of all such resolves, doings and transactions.

CHAPTER CCCXXV.

AN ACT FOR REMOVING FROM THEIR RESPECTIVE OFFICES AND PLACES ALL THE OFFICERS, BOTH CIVIL AND MILITARY, BELONGING TO THIS COLONY OF THE MASSACHUSETTS BAY IN NEW ENGLAND, HOLDING OR CLAIMING TO HOLD THEIR RESPECTIVE OFFICES OR PLACES BY OR UNDER ANY NOMINATION, APPOINTMENT OR COMMISSION MADE OR GRANTED BY ANY GOVERNOR OR LIEUTENANT GOVERNOR OF THE PROVINCE OF THE MASSACHUSETTS BAY IN NEW ENGLAND, EITHER WITH OR WITHOUT THE ADVICE AND CONSENT OF THE COUNCIL OR ASSISTANTS OF THE SAID PROVINCE, OR BY THE MAJOR PART OF THE COUNCIL OR ASSISTANTS OF SAID PROVINCE IN THE ABSENCE OF THE GOVERNOR AND LIEUTENANT GOVERNOR, BEFORE THE PRESENT MEETING OF THIS GENERAL COURT.

WHEREAS many of the civil and military officers of the said colony of the Massachusetts bay in New England have clearly manifested themselves unfriendly to the rights and liberties of these American colonies, and therefore unfit to hold or exercise the offices and employments to which they have been appointed and commissionated, and whereas it is necessary for the peace and safety of this colony, that all such officers should be deprived of their offices, and that other men, who are able, true and real friends to American liberty should be appointed and commissionated in their stead, and as it would be not only disagreeable, but also very inconvenient, either by act or proclamation, singly and by name, to deprive all such unfit persons of their respective offices, and to substitute and commissionate faithful men in their stead, leaving such as are friendly to right and liberty to exercise and discharge their respective offices by virtue of their present commissions, this court doth judge it expedient that all the officers, both civil and military, belonging to this colony, now holding their offices under or by virtue of any appointment or commission made or granted by any governor or lieutenant governor of the said province of the Massachusetts bay in New England, either with or without the advice and consent of the council, or by the major part of the council in the absence of the governor and lieutenant governor, before the present meeting of this general court, should be deprived of their respective offices, and that all such appointments and commissions should from and after

the nineteenth day of September next wholly cease and determine,

All offices, civil and military, to cease and determine from the 19th day of Sept. 1775.

Be it therefore enacted and declared by the council and house of representatives in general court assembled, and by the authority of the same, that from and after the said nineteenth day of September all the nominations, appointments and commissions at any time before the present meeting of this general court made or granted by any governor or lieutenant governor of the said province of the Massachusetts bay in New England, or by the major part of the council in the absence of the governor and lieutenant governor, appointing or commissionating any person or persons to any office civil or military, shall be utterly null, void and of none effect, and that all the powers and authorities, either civil or military, of all and every person and persons belonging to the said colony of the Massachusetts bay in New England, now holding or claiming to hold his or their office or place by or under any nomination, appointment or commission made or granted by any governor or lieutenant governor of the said province of the Massachusetts bay in New England, whether with or without the advice and consent of the council or assistants of the said province, or by the major part of the council or assistants of the said province in the absence of the governor and lieutenant governor, shall from and after the nineteenth day of September one thousand seven hundred and seventy-five wholly cease and determine.

CHAPTER CCCXXVI.

AN ACT PRESCRIBING THE FORM OF AN OATH TO BE TAKEN BY ALL COMMISSION OFFICERS, BOTH CIVIL AND MILITARY, WHO HAVE BEEN COMMISSIONATED FOR THIS COLONY SINCE THE NINETEENTH DAY OF JULY LAST, OR MAY BE HEREAFTER COMMISSIONATED, UNTIL THE FURTHER ORDER OF THE GREAT AND GENERAL COURT.

All officers, civil and military, to take the oath of office.

Sect. 1. Be it enacted by the council and house of representatives in general court assembled, and by the authority of the same, that all and every commission officer or officers civil and military, who have been commissionated since the said nineteenth day of July last, or may hereafter be commissionated by the council or assistants of the colony of the Massachusetts bay in New England, or the major part of

them, or deriving any authority from, by or under any commission made or to be made by the said council, shall until the further order of the great and general court or assembly, before they proceed in or enter upon the execution of their respective offices, take the oath hereinafter prescribed, to be administered by any two or more of said council or assistants, or such others as shall be by the said council or assistants or the major part of them thereunto appointed, that is to say,

You A. B. being appointed to the office of do solemnly swear that you will honestly, faithfully and impartially execute all the duties of the said office, according to the best of your skill and abilities. So help you God. Form of the oath.

Sect. 2. And be it further enacted and declared by the authority aforesaid, that all commission officers, civil and military, who have been or may be commissionated in manner as aforesaid, having taken the said oath in manner as above prescribed, shall be and are hereby authorised, empowered and required to proceed in the execution and exercise of their respective offices, and that every act and thing which shall be done by such officers respectively in the execution of such commission and office shall be to all intents and purposes valid and effectual in law, without his or their taking or subscribing any other oath or declaration whatsoever, any law, usage or custom whatsoever in any wise to the contrary hereof notwithstanding.

CHAPTER CCCXXVII.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED AND NEAR EXPIRING.

Whereas the several acts herein after mentioned, which are now expired or near expiring, have been found useful and beneficial, viz. two acts made in the tenth year of the reign of his late majesty king George the second, one entitled an act in further addition to an act made in the first year of his present majesty's reign, entitled an act to prevent coparceners, joint tenants and tenants in common from committing strip and waste upon lands by them held in common and undivided, the other entitled an act in further addition to an act entitled an act for the relief of idiots and distracted persons, two acts made in the fourteenth year of the same reign, one entitled an act in further addition to an

act for regulating of fences, &c., the other entitled an act to encourage the increase of sheep and goats, three acts made in the sixteenth year of the same reign, one entitled an act to prevent the multiplicity of lawsuits, another entitled an act in further addition to and explanation of an act entitled an act for regulating townships, choice of town officers, &c., the other entitled an act in addition to the several laws of this province relating to the support of poor and indigent persons, two acts made in the eighteenth year of the same reign, one entitled an act to prevent unnecessary cost being allowed to parties and witnesses in the several courts of justice within this province, the other entitled an act in addition to the act entitled an act for appointing commissioners of sewers, two acts made in the twentieth year of the same reign, one entitled an act relating to views by a jury in civil actions, the other entitled an act more effectually to prevent profane cursing and swearing, two acts made in the twenty-second year of the same reign, one entitled an act for the ease of prisoners for debt, the other entitled an act for the more easy partition of lands, five acts made in the twenty-third year of the same reign, one entitled an act for the punishing such offenders as shall be any ways concerned in contriving, writing or sending any incendiary or menacing letters in order to extort sums of money or other things of value from any of his majesty's good subjects, another entitled an act against diminishing or counterfeiting money, another entitled an act in addition to and for rendering more effectual an act for the restraining the taking excessive usury, another entitled an act to prevent stage plays and other theatrical entertainments, the other entitled an act in addition to the act entitled an act to encourage the increase of sheep and goats, two acts made in the twenty-fourth year of the same reign, one entitled an act providing for the support of ministers in new plantations, the other entitled an act in addition to an act for regulating fences, cattle, &c., four acts made in the twenty-sixth year of the same reign, one entitled an act for further regulating the proceedings of the courts of probate within this province, another entitled an act for the more easy partition of lands or other real estate given by will and held in common and undivided among the devisees, another entitled an act for further preventing all riotous, tumultuous and disorderly assemblies or companies of persons, and for preventing bonfires in any of the streets or lanes within any of the towns of this province, the other entitled an act for preventing damage by horses going at large, an act made in the twenty-seventh year of the same reign, entitled an act in addition to the several laws of this government made for the regulating general fields, one act made in the twenty-ninth year of the same reign,

entitled an act in addition to the several acts and laws of this province now in force respecting poor and idle, disorderly and vagrant persons, an act made in the thirtieth year of the same reign, entitled an act for further regulating the course of judicial proceedings, an act made in the thirty-first year of the same reign, entitled an act in addition to an act entitled an act in addition to the act for providing of pounds, &c., four acts made in the thirty-second year of the same reign, one entitled an act providing that the solemn affirmation of the people called quakers shall in certain cases be accepted instead of an oath in the usual form, another entitled an act in addition to an act entitled an act for regulating of fences, cattle, &c., another entitled an act in addition to an act relating to executors and administrators, the other entitled an act in further addition to an act entitled an act for explanation of and supplement to an act referring to the poor, &c., three acts made in the thirty-third year of the same reign, one entitled an act relating to ferries, another entitled an act for the better regulating the choice of petit jurors, the other entitled an act for the more easy division and distribution of intestate estates, two acts made in the first year of his present majesty's reign, one entitled an act empowering the courts of general sessions of the peace in this province to grant licenses in certain cases, and thereby to prevent unnecessary petitions to the general court, the other entitled an act providing for the levying and collecting of taxes in plantations that are not incorporated, an act made in the third year of the same reign, entitled an act to exempt the people called quakers from the penalty of the law for non-attendance on military musters, an act made in the seventh year of the same reign, entitled an act in addition to the several laws already made relating to the removal of poor persons out of the towns whereof they are not inhabitants, an act made in the eighth year of the same reign, entitled an act in further addition to the several acts for the settlement and support of schools and schoolmasters,

Be it therefore enacted by the council and house of representatives in general court assembled, and by the authority of the same, that such of the before mentioned acts as are now expired be revived, and such of said acts as are not yet expired be continued, with all and every clause, matter and thing therein respectively contained, and shall be in force until the first day of November one thousand seven hundred and seventy-nine, and from thence to the end of the then next session of the general court, and no longer.

CHAPTER CCCXXVIII.

AN ACT PROVIDING FOR A MORE EQUAL REPRESENTATION IN THE GENERAL COURT.

WHEREAS the present representation of this colony is not so equal as it ought to be, and this court being desirous to have the same as proportionate as it can in the present state of the colony be made,

Each town of 220 freeholders may choose three members, of 320, four, and so in proportion.

SECT. 1. Be it therefore enacted by the council and house of representatives in general court assembled, and by the authority of the same, that each town in this colony which contains two hundred and twenty freeholders and other inhabitants qualified to vote for representatives, as by the charter is provided, shall at all times have the privilege of sending three members to represent them in the great and general court of this colony, and that those towns which have three hundred and twenty freeholders and other inhabitants qualified as aforesaid may send four, and in that proportion for any greater number of freeholders and other inhabitants qualified as aforesaid, any law to the contrary notwithstanding.

SECT. 2. And be it further enacted and declared, that this act shall be construed and taken to empower every town in this colony to elect and depute representatives to serve for and represent them in the next general assembly as well as if it had been made and passed before the issuing of the writs for the choice of representatives for the next general assembly.

Proviso.

Provided, that nothing in this act shall extend or be construed to extend to alter or deprive any town of the privilege of sending as many representatives as they have heretofore been empowered to send.

CHAPTER CCCXXIX.

AN ACT IN ADDITION TO AN ACT, PASSED IN THE YEAR SIXTEEN HUNDRED NINETY-FOUR, FOR THE RELIEF OF IDIOTS AND DISTRACTED PERSONS.

WHEREAS in and by the said act provision is only made for appointing guardians for such as are naturally wanting

of understanding, or shall by the providence of God fall into distraction, or become non compos mentis, and whereas there have been and are instances of persons being deaf and dumb from their nativity, who although they cannot with propriety be said either to be naturally wanting in understanding, or to come under the denomination of idiots or of persons non compos mentis, yet are, by reason of their being deaf and dumb, as aforesaid, incapacitated to make or execute a power of attorney or any other instrument,

And whereas it sometimes becomes expedient to have guardians also appointed for the children of idiots, or persons non compos mentis, or deaf and dumb as aforesaid, who are incapable of taking due care of the support and education of their children and no provision is by law made for any of the said cases,

Judges of probate empowered to appoint guardians to persons deaf and dumb.

Also to appoint guardians for the children of idiots.

SECT. 1. Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that the judges of probate in their respective counties within this state be and hereby are fully authorised and empowered to appoint guardians to persons deaf and dumb from their nativity, and to such others as from a defect in the organs of their body are incapacitated to take care of their estates, in the same way and manner as they now are by law empowered to appoint guardians to idiots and distracted persons; and also to appoint guardians for the children of idiots, or of persons non compos mentis, or deaf and dumb, in the life time of their parents.

Judges of probate to be governed by a temporary act, passed A.D. 1737, to determine the incapacity of such persons.

SECT. 2. And be it further enacted, that the judges of probate in order to determine the incapacity of such persons as aforesaid, to take care of their estates or children, are to be governed by the rules and regulations prescribed by a temporary act of this state made and passed in the year of our Lord 1737, entitled an act in further addition to an act, entitled an act for the relief of idiots and distracted persons, and revived by an act passed in February 1776.

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CHAPTER CCCXXX.

AN ACT FOR PREVENTING THE OPERATION OF AN ACT, MADE IN THE YEAR OF OUR LORD ONE THOUSAND SEVEN HUNDRED AND SEVENTY, ENTITLED AN ACT FOR REPEALING THE SEVERAL LAWS NOW IN FORCE WHICH RELATE TO THE LIMITATION OF PERSONAL ACTIONS, AND FOR THE LIMITATION OF PERSONAL ACTIONS FOR THE FUTURE, AND FOR AVOIDING SUITS AT LAW.

WHEREAS, considering the present state of our publick affairs, the limitation of actions and suits, according to the provision made in and by said act, would be the means of much injustice to many persons now employed in the service of their country, necessarily absent from their homes, and occasion a multiplicity of lawsuits, contrary to the inclination of many creditors who would thereby be compelled to commence and prosecute the same to the great grievance of many good people of this state, for the preventing whereof,

To suspend the operation of this act until the 1st day of Dec. 1778.

Be it enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that the operation of the said act shall be stayed and suspended until the first day of December, which will be in the year of our Lord one thousand seven hundred and seventy-eight; and that any actions or suits may be commenced and prosecuted in any of the courts of record, or before any of the justices of the peace, within this state, during that term, in like manner and form to all intents and purposes, as they might have been commenced and prosecuted, in case the said act or any of the acts or laws relating to the limitation of personal actions which are repealed by the same act had never been made.

CHAPTER CCCXXXI.

AN ACT FOR PREVENTING OR PUNISHING CRIMES THAT MAY BE COMMITTED AGAINST THE PUBLICK SAFETY, BELOW THE DEGREE OF TREASON AND MISPRISION OF TREASON.

WHEREAS the congress of the united colonies of America, in order to preserve the inhabitants thereof from that ruin

and misery to which they were destined by the avarice and cruelty of Great Britain, did upon the fourth day of July, one thousand seven hundred and seventy-six, declare the said colonies to be free states, independent of all people and nations, and whereas some evil minded persons within this state have at divers times by words and actions endeavoured to discourage the people thereof from supporting said declaration, as also in their opposition to those acts and measures of the king and parliament of Great Britain, which induced the congress to make such declaration,

All persons, in preaching or praying, not to support or justify the measures taken by the king or parliament of Great Britain.

SECT. 1. Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that if any person shall make use of any expressions in preaching or praying, or in publick or private discourse or conversation, with an apparent design to discourage the people of this state, or any of them from supporting said declaration, or that shall by words or actions directly or indirectly endeavour to support or justify the measures taken by the king and parliament of Great Britain against the American states, or shall dissuade the people of this state or any of them from supporting their opposition to said measures, or shall endeavour by any ways or means to prevent the continental army from being raised, or the continental navy from being manned, or with an evident design to prevent the raising said army or manning said navy, shall dissuade or endeavour to prevent any person or persons from inlisting in the army or navy of the United States, or either of them, or shall use any means to hurt or destroy the credit of the publick bills of the United States of America, or of this state, each person so offending, and being thereof convicted, shall pay a fine to the use of the town or plantation where such offence is committed, not exceeding fifty pounds, nor less than twenty shillings, at the discretion of the court before whom the conviction shall be, and shall recognize for his good behaviour as such court shall order, and stand committed until sentence be performed.

Penalty on conviction.

Justices to order offenders to find sureties or commit them to gaol.

SECT. 2. And be it further enacted by the authority aforesaid, that any justice of the peace, upon complaint made to him of such offence, and finding presumptive evidence that the same is true, shall order such offender to find sureties for his appearance at the next court of general sessions of the peace to be held in the county where such offence is committed, and in default thereof to commit such offender to the common gaol; and all sheriffs, constables, grand jurors and tithingmen, are directed and enjoined to make presentment and complaint of all such offences as shall come to their knowledge respectively.

CHAPTER CCCXXXII.

AN ACT IN ADDITION TO AN ACT, ENTITLED AN ACT FOR REGULATING OF TOWNSHIPS, CHOICE OF TOWN OFFICERS, AND SETTING FORTH THEIR POWER.

WHEREAS it sometimes happens that the major part of the selectmen in some towns do remove out of town, or are absent in the service of the United States of America, or either of them go beyond sea, in which cases no persons have legal authority in such towns to call town meetings, or transact such business as selectmen are by law authorised to transact, and such selectmen being also frequently assessors, town treasurer, and overseers of the poor, the necessary business of such towns are greatly embarrassed, for remedy whereof,

Selectmen empowered to call town meetings, or if there be no selectmen, the town clerk.

SECT. 1. Be it enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that when it shall happen from either of the causes aforesaid, that the major part of the selectmen of any town are absent from such town, such selectman or selectmen as may be resident in such town, or the major part of them, or the town clerk, if there be no selectman in such town, are hereby authorised and empowered to call a town meeting for the sole purpose of supplying such vacancy at any time in the year; and such person or persons shall have the same power and authority in the several offices of selectmen, town treasurers, assessors or overseers of the poor as if such person or persons had been chosen to such office at the annual meeting in the month of March next preceding.

Town officers being absent, the inhabitants of any town empowered to choose some person in their room.

SECT. 2. And be it further enacted, that if any other town officer shall be absent in the service of the states of America, or either of them, or gone beyond sea, it shall be in the power of the inhabitants of any town at such meeting as is before provided for, to choose some other person to serve in the room of such officers so absent, and the person or persons so chosen in any office at such meeting, shall have all the powers and authority incident to the office or offices to which they shall be chosen, until the next annual meeting in March; any law or custom to the contrary notwithstanding.

CHAPTER CCCXXXIII.

AN ACT FOR REVIVING AND CONTINUING A LAW THAT IS EXPIRED.

WHEREAS the act, entitled an act to exempt the people called quakers and antipædabaptists from paying taxes for the support of ministers settled by the laws of this province, and for the building and repairing meeting houses, or places of publick worship, which is now expired, has been found useful and beneficial,

Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that the before mentioned act, now expired, be revived and continued with all and every clause, matter and thing therein respectively contained, and shall be in force until the first day of November, one thousand seven hundred and seventy-nine, and from thence to the end of the then next session of the general court, and no longer.

CHAPTER CCCXXXIV.

AN ACT TO OBLIGE PERSONS TO ATTEND AND GIVE EVIDENCE IN CERTAIN CASES IN THE NEIGHBOURING STATES.

WHEREAS some persons are or may be apprehended in the neighbouring states next adjoining for the crimes of forging, counterfeiting, altering or uttering the bills or notes of publick credit of the United States, or either of them, and some persons who now stand indicted or may be indicted for the same crime or crimes may escape indictment and the punishment due to their crimes, by means that the material witnesses reside within this state, and refuse to give their attendance at any court within such states, not being compellable thereto by law, and whereas some persons may refuse or neglect to attend and give evidence in like cases in behalf of the accused,

SECT. 1. Be it therefore enacted by the council and house of representatives in general court assembled, and by the authority of the same, that when a certificate shall be sent under the hand of the attorney general or clerk of the superiour court in any neighbouring state, signifying that any person residing within this state is supposed to be a material

Certificate of any supposed material witness to be made to any justic

of the peace.

witness in any such matter as aforesaid, pending in any court as aforesaid, and praying for process to compel such persons to appear there and give evidence, any justice of the peace in the county where such person is resident is hereby required, upon being served with such certificate, to issue process or summons under his hand directed to the sheriff of the same county, his under-sheriff or deputy, and to either of the constables of the town in which such supposed witness resides, commanding them to summon such person or persons to appear and testify what they know relative to any such matter, and before such court as is in said certificate set forth; and all sheriffs, their under-sheriffs or deputies, and all constables to whom such process or summons may be directed are hereby required to serve the same, and make return of their doings therein to the justice issuing the same; and if any such witness or witnesses, summoned to appear and give evidence as aforesaid, who shall have tendered to him, her or them such reasonable sum or sums of money for his, her or their costs and charges as, having due regard to the distance, the said justice shall judge necessary, shall wilfully and without reasonable hindrance neglect to appear and give evidence, according to the tenor of such process or summons served on them as aforesaid, such person or persons so making default shall forfeit and pay a sum not exceeding two thousand pounds, nor less than one hundred pounds, to be recovered by presentment or indictment in the superiour court of judicature, court of assize and general gaol delivery, one moiety thereof to the prosecutor, and the other half to the use of the county where such person is an inhabitant, and may also be imprisoned for a term not exceeding twelve months, nor less than six months.

Who is to summon them to appear.

Penalties for neglecting to appear.

Persons charged with crimes may compel witnesses.

SECT. 2. And be it further enacted by the authority aforesaid, that all persons apprehended for the crimes aforesaid may have the same means to compel witnesses residing in this state to appear and give evidence in their behalf, as is herein provided to compel witnesses to appear and give evidence in behalf of the state.

CHAPTER CCCXXXV.

AN ACT FOR PRESCRIBING AND ESTABLISHING AN OATH OF FIDELITY AND ALLEGIANCE.

WHEREAS the king of Great Britain hath abdicated the government of this and the other United States of America,

by putting them out of his protection and unjustly levying war against them, and the said United States by their representatives in general congress assembled, by a declaration bearing date the fourth day of July anno Domini one thousand seven hundred and seventy-six, for the reasons therein mentioned, solemnly declared that the united colonies of North America are, and of right ought to be free and independent states, that they are absolved from all allegiance to the British crown, and that all political union between them and the state of Great Britain is and ought to be totally dissolved, which declaration has been solemnly ratified and adopted by this state, and whereas in all states protection and allegiance are and ought to be reciprocal, and those who will not bear the latter are not entitled to the benefit of the former,

Power of any justice of the peace to cause suspected persons to be brought before him.

SECT. 1. Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that any justice of the peace in any county in this state shall have full power and authority, and he is hereby required, upon representation made to him in writing, signed by any member of the council or house of representatives, civil or military officer of any town or county, or of a selectman or member of any committee of correspondence, inspection and safety, or of any two substantial freeholders within any town or plantation of this state, that there is in his or their opinion just and sufficient reason to suspect that any particular person so named, residing in any town or plantation in this state, is inimical to the United States, such justice is hereby empowered and required to cause any person so suspected to be brought before him, and to administer an oath or affirmation to such person so represented, excepting to such persons as were appointed counsellors within this state by mandamus from the king of Great Britain, accepted of such appointment, acted in consequence of it, and have since joined the enemy, and to such other persons as have left this state since the nineteenth of April one thousand seven hundred and seventy-five and have joined the enemy, such as have taken up arms against the United States, unless they can make it appear they were compelled thereto, as have inlisted men for the enemy or accepted a warrant or commission for that purpose, or conveyed intelligence to them, since the declaration of independency, in the form following,

Form of the oath.

I A. B. do swear (or affirm, as the case may be) that I will bear true faith and allegiance to the state of Massachusetts bay, and will faithfully support and maintain and defend the same against George the third, king of Great Britain, his abettors, and all other enemies and opposers whatsoever, and will discover all plots and conspiracies that shall come to my knowledge against said state or any other of the United States of America. So help me GOD.

Power of the justice of the peace, in case of refusal to take the oath.

SECT. 2. And be it further enacted by the authority aforesaid, that if any person or persons to whom the said oath shall be tendered by virtue of this act shall refuse to take the same, the said justice shall commit the person or persons so refusing to the gaol of the county where the oath was tendered, and certify the same to the council as soon as may be, with the costs that have arisen on the process, which with the gaoler's fees shall be paid out of the personal estate of the person so refusing, in all cases where he is of sufficient ability, and in all other cases out of the treasury of this state, and the person or persons so refusing shall within forty days after such refusal be sent off by order of the council of this state to some port in the dominions of the king of Great Britain, at their own expense in all cases where in the judgment of the council they have estate sufficient to support it, and in all other cases at the publick expense; and the council are hereby empowered to cause passages to be procured for all such persons, or to hire a vessel or vessels for that purpose; and all and every such person or persons so refusing shall be at liberty to sell and dispose of his or their personal estate, and after satisfying all just and equitable claims and demands which shall be brought against him or them, to carry away the residue thereof, and also to nominate and appoint an attorney or attorneys to be approved by the council to sell and dispose of his or their personal estate, and in like manner as the subjects of this state to demand, sue for and recover in his or their name or names all such debts and sums of money as are or shall be due, owing or payable to him or them respectively, in such way or manner as they shall think fit, provided it be not repugnant to the resolutions of congress, or the laws of this state.

And of the council.

Persons returning without leave, to suffer.

SECT. 3. And be it further enacted by the authority aforesaid, that if any person or persons so sent off from this state as aforesaid shall voluntarily return into the same again, unless leave be obtained from the general court for that purpose, he or they being duly convicted thereof in the superiour court of judicature, court of assize and general gaol delivery, shall suffer the pains of death without benefit of clergy.

Persons described who are to be sent out of the states, as if they had refused to take the oath.

SECT. 4. And be it further enacted by the authority aforesaid, that if any persons who were appointed counsellors within this state by mandamus from the king of Great Britain, accepted of such appointment, acted in consequence of it and have since joined the enemy, or any such other person or persons as have left the state since the nineteenth of April one thousand seven hundred and seventy-five, and have joined the enemy, or any such persons as have taken up arms against the United States, unless they can make it appear they were compelled thereto, or have inlisted men for the enemy, or accepted a warrant or commission for that pur-

pose, or conveyed intelligence to them since the declaration of independency, and such as have supplied the enemy with provisions, all and every person so offending, who shall hereafter voluntarily return to this state, shall by order of council be sent off, as if he or they had refused to take the oath or affirmation prescribed by this act, excepting in such case they shall not be entitled to any advantage from their personal estate; and if he or they shall voluntarily return to this state after being so sent off, unless leave be obtained from the general court for that purpose, he or they shall upon conviction thereof in the superiour court of judicature, court of assize and general gaol delivery, suffer death without benefit of clergy.

Particular persons required to take the oath.

SECT. 5. And be it enacted by the authority aforesaid, that all members of the general assembly, and all officers civil and military, and all attorneys at law, shall take the oath or affirmation before mentioned. and no person shall have authority to execute any of the offices or trusts aforesaid, or shall be admitted to appear and act as attorney or council in any court of justice in this state after the twentieth day of March next, unless he shall have taken said oath or affirmation; and all and every person or persons who shall hereafter be appointed to any of the aforesaid offices and places of trust or emolument shall, before he enter upon the execution of such office or place of trust, take the oath or affirmation before prescribed, and the said oath or affirmation shall be administered to the members of the general court by any three of the council, and to all others appointed to any of the offices and places of trust aforesaid, by any two of the council, or such others as shall be by the said council or the major part of them thereunto appointed.

Alterations of words accommodated to the people called quakers.

SECT. 6. And be it further enacted by the authority aforesaid, that such persons as are of the denomination of Christians called quakers, to whom the said affirmation may be tendered, the words "and defend" shall be omitted, and instead of the words "so help me GOD," shall be used the words "and this I affirm upon the pains and penalties of perjury."

CHAPTER CCCXXXVI.

AN ACT FOR REVIVING AND CONTINUING SUNDRY LAWS THAT ARE EXPIRED AND NEAR EXPIRING.

WHEREAS the several acts herein after mentioned, which are now expired or near expiring, have been found useful and beneficial, viz. one act made in the year of our Lord

one thousand seven hundred and thirty-six, entitled an act to enable the overseers of the poor and selectmen to take care of idle and disorderly persons, one act made in the year of our Lord one thousand seven hundred and thirty-nine, entitled an act in addition to the several laws of this province relating to common roads and private ways, one act made in the year of our Lord one thousand seven hundred and forty, entitled an act for explanation of and supplement to the act referring to the poor, &c., one act made in the year of our Lord one thousand seven hundred and forty-one, entitled an act in addition to an act entitled an act for explanation of and supplement to an act referring to the poor, two acts made in the year of our Lord one thousand seven hundred and forty-two, one entitled an act to prevent unnecessary law-suits, the other entitled an act to prevent gaming for money or other gain, one act made in the year of our Lord one thousand seven hundred and forty-four, entitled an act to prevent unnecessary expense in suits at law, two acts made in the year of our Lord one thousand seven hundred and forty-six, one entitled an act in further addition to an act entitled an act for highways, the other entitled an act to enable the proprietors of private ways to repair them in an equal manner, one act made in the year of our Lord one thousand seven hundred and fifty-one, entitled an act for the better regulation of the course of judicial proceedings, one act made in the year of our Lord one thousand seven hundred and fifty-six, entitled an act for preventing petitions to the general court relating to licenses for retailing strong drink and keeping houses of publick entertainment, two acts made in the year of our Lord one thousand seven hundred and sixty-three, one entitled an act for the relief of poor prisoners for debt, the other entitled an act in addition to the act made and passed in the eighth year of the reign of her late majesty queen Anne, entitled an act for regulating of drains or common shores, one act made in the year of our Lord one thousand seven hundred and seventy-six, entitled an act for preventing the operation of an act made in the year of our Lord one thousand seven hundred and seventy, entitled an act for repealing the several laws now in force which relate to the limitation of personal actions, and the limitation of personal actions for the future, and for avoiding suits at law, one act made in the year of our Lord one thousand seven hundred and seventy-seven, entitled an act to oblige persons to attend and give evidence in certain cases in the neighbouring states,

Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that such of the beforementioned acts as are now expired be revived, and such of said acts as are not yet expired be continued, with all and every clause, matter and thing therein respectively contained, and shall be in

force until the first day of November one thousand seven hundred and eighty-two, and from thence to the end of the then next session of the general court, and no longer.

CHAPTER CCCXXXVII.

AN ACT FOR MAKING PROVISION FOR APPEALS TO CONGRESS IN CERTAIN MARITIME CASES, AND UNDER CERTAIN RESTRICTIONS.

WHEREAS congress, by certain late resolves have claimed the final appellant jurisdiction in all maritime causes, as incident to the rights of making peace and war, and the reasons upon which said resolves are founded appearing to this court, in many instances, to arise out of the greatest political convenience and necessity, and no provision being made for appeals to congress in any maritime causes, but in cases of capture by continental ships of war, therefore,

That appeals in all maritime causes be granted to congress.

SECT. 1. Be it enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that appeals to congress, or such judge or judges as may be by them appointed, shall be granted in all maritime causes, which shall be hereafter in any maritime court within this state, wherein any subject or subjects of any kingdom or state in amity with this and the United States of America, shall, in due form of law, claim the whole or any part of the vessel or cargo that may be in trial as aforesaid; provided said appeal be claimed at any time during the session of said court, where said trial may be had, and such security given for the prosecution of such appeal to effect, as the judge before whom the same may be tried, shall think reasonable, such appeal to respect such parts of such vessels or cargoes only as shall be claimed by the subjects of such kingdom or state in amity with this state and the United States of America.

Proviso.

Any persons choosing to wave the right of appeal to congress may appeal to the superiour court of judicature.

SECT. 2. And be it further enacted by the authority aforesaid, that in case any person or persons who by this act are entitled to an appeal from the sentence or decree of any maritime court in this state, to congress, or such judge or judges of appeal, as may be by them appointed in such cases, shall choose to wave such right of appeal, he shall be entitled in lieu thereof, to an appeal to the superiour court of judicature for this state; provided always, that this act shall not be construed to extend the right of appeal in any

Proviso.

case when the matter in controversy shall be between the subjects of this or any other of the United States.

Subjects of any kingdom in amity with the United States may claim a right of appeals from the judgment of the superiour court to congress.

SECT. 3. And be it further enacted by the authority aforesaid, that in all maritime causes now pending in the superiour court of judicature for this state, by appeal from any maritime court within this state, wherein any subject or subjects of any kingdom or state in amity with this and the United States of America are claimants of the whole or any part of the vessels or cargoes in controversy, an appeal shall be granted to either party who may claim the same, from the judgment of the said superiour court, to congress, or to such judge or judges of appeal as may be appointed by congress in such cases, to hear and determine the same, provided said appeal is claimed at any time during the session of said superiour court, where such cause or causes may be tried as aforesaid, and such security given for the prosecution of such appeal to effect, as the judges of said superiour court shall think reasonable.

Proviso.

SECT. 4. And be it further enacted by the authority aforesaid, that all maritime causes pending in the said superiour court, which are continued by a special order of this court, shall be tried at the next term of said court, in the district where such causes are pending, unless the judges of said court shall see cause further to continue the same; and the resolve directing the continuance of such causes is hereby repealed and made null and void.

CHAPTER CCCXXXVIII.

AN ACT FOR CONTINUING SUNDRY LAWS THAT ARE NEAR EXPIRING.

WHEREAS the several acts herein after mentioned, which are near expiring, have been found useful and beneficial, viz. two acts made in the year of our Lord one thousand seven hundred and thirty-seven, one entitled an act in further addition to an act, made in the first year of his present majesty's reign, entitled an act to prevent coparceners, joint tenants, and tenants in common, from committing strip and waste upon lands by them held in common and undivided, the other entitled an act in further addition to an act, entitled an act for the relief of idiots and distracted persons, two acts, made in the year of our Lord one thousand seven hundred and forty-one, one entitled an act in further addition to an act for regulating of fences, &c. the other entitled an

act to encourage the increase of sheep and goats, three acts made in the year of our Lord one thousand seven hundred and forty-two, one entitled an act to prevent the multiplicity of lawsuits, another, entitled an act in further addition to and explanation of an act, entitled an act for regulating townships, choice of town officers, &c. the other, entitled an act in addition to the several laws of this province relating to the support of poor and indigent persons, two acts, made in the year of our Lord one thousand seven hundred and forty-four, one entitled an act to prevent unnecessary cost being allowed to parties and witnesses in the several courts of justice within this province, the other, entitled an act in addition to the act, entitled an act for appointing commissioners of sewers, two acts, made in the year of our Lord one thousand seven hundred and forty-six, one entitled an act relating to views by a jury, in civil actions, the other entitled an act more effectually to prevent profane cursing and swearing, two acts, made in the year of our Lord one thousand seven hundred and forty-eight, one, entitled an act for the ease of prisoners for debt, the other, entitled an act for the more easy partition of lands, one act, made in the year of our Lord one thousand seven hundred and forty-nine, entitled an act for the punishing such offenders as shall be any ways concerned in contriving, writing, or sending any incendiary or menacing letters, in order to extort sums of money, or other things of value, from any of his majesty's good subjects, four acts, made in the year of our Lord one thousand seven hundred and fifty, one, entitled an act against diminishing or counterfeiting money, another, entitled an act in addition to and for rendering more effectual an act for the restraining the taking excessive usury, another, entitled an act to prevent stage plays and other theatrical entertainments, the other, entitled an act in addition to the act, entitled an act to encourage the increase of sheep and goats, two acts, made in the year of our Lord one thousand seven hundred and fifty-one, one, entitled an act providing for the support of ministers in new plantations, the other, entitled an act in addition to an act for regulating fences, cattle, &c. three acts, made in the year of our Lord one thousand seven hundred and fifty-two, one, entitled an act for further regulating the proceedings of the courts of probate within this province, another, entitled an act for the more easy partition of lands or other real estate, given by will, and held in common and undivided among the devisees, the other, entitled an act for further preventing all riotous, tumultuous and disorderly assemblies or companies of persons, and for preventing bonfires in any of the streets or lanes within any of the towns of this province, two acts, made in the year of our Lord one thousand seven hundred and fifty-three, one, entitled an act for preventing damage by horses going at large,

the other, entitled an act in addition to the several laws of this government, made for the regulating general fields, one act, made in the year of our Lord one thousand seven hundred and fifty-six, entitled an act in addition to the several acts and laws of this province now in force, respecting poor, and idle, disorderly, and vagrant persons, two acts, made in the year of our Lord one thousand seven hundred and fifty-seven, one, entitled an act for further regulating the course of judicial proceedings, the other, entitled an act in addition to an act, entitled an act in addition to the act for providing of pounds, &c. four acts, made in the year of our Lord one thousand seven hundred and fifty-nine, one, entitled an act providing that the solemn affirmation of the people called quakers shall, in certain cases, be accepted instead of an oath in the usual form, another, entitled an act in addition to an act, entitled an act for regulating of fences, cattle, &c. another, entitled an act in addition to an act relating to executors and administrators, the other, entitled an act in further addition to an act, entitled an act for explanation of and supplement to an act referring to the poor, &c. three acts, made in the year of our Lord one thousand seven hundred and sixty, one, entitled an act relating to ferries, another, entitled an act for the better regulating the choice of petit jurors, the other, entitled an act for the more easy division and distribution of intestate estates, two acts, made in the year of our Lord one thousand seven hundred and sixty-one, one, entitled an act further empowering the courts of general sessions of the peace in this province, to grant licenses in certain cases, and thereby to prevent unnecessary petitions to the general court, the other, entitled an act providing for the levying and collecting of taxes in plantations that are not incorporated, one act, made in the year of our Lord one thousand seven hundred and sixty-three, entitled an act to exempt the people called quakers from the penalty of the law for non-attendance on military musters, one act, made in the year of our Lord one thousand seven hundred and sixty-seven, entitled an act in addition to the several laws already made, relating to the removal of poor persons out of the towns whereof they are not inhabitants, one act, made in the year of our Lord one thousand seven hundred and sixty-eight, entitled an act in further addition to the several acts for the settlement and support of schools and schoolmasters,

Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that all the before mentioned acts, which are now near expired, be continued, with all and every clause, matter and thing therein respectively contained, shall be in force until the first day of November one thousand seven hundred and eighty-five.

APPENDIX.

CHAPTER I.

ACTS ASSIGNING LANDS IN THE COLONY OF MASSACHUSETTS BAY TO INDIVIDUALS.

SECT. 1. THE court taking into due and mature consideration, how necessary it will be that a dividend be forthwith made of some competent quantity of land in the London plantation in New England, both for the present accommodation of the people lately gone thither, as well to build them houses as to inclose and manure and feed their cattle on, have thought fit and ordered, that the governor, deputy and council there shall make a dividend accordingly; and allot the same unto the several adventurers and others as followeth, viz. that two hundred acres of land be by them allotted to each adventurer for fifty pounds adventure in the common stock, and so after that rate and according to that proportion for more or less as the adventure is, to the intent they may build their houses and improve their labours thereon; that every adventurer in the common stock, or his servant for him or on his behalf, shall make request or demand to the governor, or deputy and council, to have a proportion of land allotted unto him accordingly; and if within ten days after such request or demand made, the same be not set out and allotted unto him, then such person or persons are by virtue of this act permitted and authorised to seat him or themselves, and build his or their house or houses, and inclose and manure ground, in any convenient place or places not formerly built upon or manured, provided that the land so made choice of by any such person or persons do not exceed in quantity the one half of the land which is to be allotted unto him or them by dividend, according to this order above written, with

liberty also, when the first dividend shall be made, to take his or their allotment of land as others do, in lieu of this, if in the mean time the first choice shall be disliked by them or any of them.

And for further explanation of this act, it is thought fit, that if the plot of ground whereon the town is to be built be set out, and that it be publickly known to be intended for that purpose, that then no man shall presume to build his house in any other place, unless it be in the Massachusetts bay, and then according to such directions as shall be thought meet for that place; and in case his allotment for building his house within the plot of ground set out for building of the town be not appointed unto him within ten days after demand or request to the governor, or the deputy and council for the same, it shall be free for any, being an adventurer in the common stock, or his servant for him or on his behalf, to build his house within any place within the said plot set out for the town, and to impale to the quantity of half an acre of ground for each fifty pounds adventure in the common stock, unless a greater or lesser proportion be formerly determined by the governor and council, by which each builder is to be guided and directed.

Sect. 2. It is further thought fit and ordered, that all such as go over in person, or send over others at their own charge, and are adventurers in the common stock, shall have lands allotted unto them for each person they transport to inhabit the plantation, as well servants as all others, which fifty acres of land so allotted to servants or others is hereby ordered to be to and for the use of his master or setter forth, being an adventure in the common stock, to dispose of at his discretion, in regard the master is at the charge of the said servant and others, their transportation, wages and otherwise.

Sect. 3. But for such as, being no adventurers in the common stock, shall transport themselves and their families, it is ordered, that fifty acres of land shall be allotted and set out for the master of the family, and such a proportion of land more, if there be cause, as according to their charge and quality the governor and council of the plantation there shall think necessary for them, whereby their charge may be fully and amply supported, unless it be to any with whom the company in London have or shall make any other particular agreement, to which relation is to be had in such case.

Sect. 4. And to the end every adventurer may the more safely and peaceably enjoy their said lands allotted out to them, or chosen by them and the houses they build thereon as aforesaid, it is thought fit and ordered by the court, that conveyances shall be made thereof unto each particular man for the land he possesseth in the company's name, and the

common seal of the company to be thereto affixed by the governor and council there at the charge of the company, which common seal is by this court thought fit and ordered to be committed to the charge and keeping of the governor for the time being, and in his absence to his deputy there.

All which premises before mentioned the company do by general consent ratify, establish and confirm, and do also order that copies of such acts shall be sent to the governor and council there resident, subscribed by the governor, deputy, and six of the assistants here, sealed with the common seal of the company. [May, 1629.]

SECT. 5. It is ordered, that no servant shall have any lot of land allowed him in any plantation, till he hath approved his faithfulness to his master during the time of his service. [September, 1634.]

SECT. 6. It is further ordered, that every man of or above the age of sixteen years, who hath been or shall hereafter be resident within this jurisdiction by the space of six months, as well servants as others, and not enfranchised, shall take the oath of resident before the governor, deputy governor, or two of the next assistants, who shall have power to convent him for that purpose, and upon his refusal to bind him over to the next court of assistants, and upon his refusal the second time to be punished at the discretion of the court; further it is agreed that the order made in April, 1634, for the assuring of lands and town lots for freemen, shall forthwith be put in execution, and that those which are not freemen, that have taken or shall hereafter take their oaths respectively, shall have the same assurance of land as in that order is provided for freemen. [March, 1635.]

CHAPTER II.

ACTS RESPECTING PERSONAL LIBERTY AND RESTRAINT.

SECT. 1. IT is ordered, that no man within the limits of this jurisdiction shall hire any person for a servant for less time than a year, unless he be a settled housekeeper; also that no person whatsoever shall travel out of this patent, either by sea or land, without leave from the governor, deputy governor or some other assistant, under such penalty as the court shall think meet to inflict. [June, 1631.]

SECT. 2. As an addition to an order made 22d March, 1630, it is ordered, that if any single person be not provided of sufficient arms allowable by the captains or lieutenants before the tenth of April next, he shall be compelled to serve by the year with any master that will retain him for such wages as the court shall think meet to appoint. [March, 1632.]

CHAPTER III.

ACTS AS TO THE FORM OF THE GOVERNMENTS.

SECT. 1. IT was generally agreed upon by erection of hands, that the governor, deputy-governor and assistants should be chosen by the whole court of governor, deputy-governor and assistants, and freemen, and that the governor shall always be chosen out of the assistants. [May, 1632.]

SECT. 2. It was agreed and ordered, that the former oath of freemen shall be revoked, so far as it is dissonant from the oath of freemen here under written, and that those that received the former oath shall stand bound no further thereby, to any intent or purpose, than this new oath ties those that now take the same.

I A. B. being, by God's providence, an inhabitant, and freeman within the jurisdiction of this commonwealth, do freely acknowledge myself to be subject to the government thereof, and therefore do here swear, by the great and dreadful name of the everliving God, that I will be true and faithful to the same, and will accordingly yield assistance, and support thereunto, with my person and estate, as in equity I am bound, and will also truly endeavour to maintain and preserve all the liberties and privileges thereof, submitting myself to the wholesome laws and orders, made and established by the same; and further, that I will not plot nor practise any evil against it, nor consent to any that shall so do, but will timely discover, and reveal the same to lawful authority, now here established, for the speedy preventing thereof; moreover I do solemnly bind myself in the sight of God, that when I shall be called to give my voice touching any such matter of this state wherein freemen are to deal, I will give my vote and suffrage, as I shall judge in mine own conscience may best conduce and tend to the publick weal of the body, without respect of persons or favour of any man. So help me God, in the Lord Jesus Christ.

Further it is agreed, that none but the general court hath power to choose and admit freemen; that none but the general court hath power to make and establish laws, nor to elect and appoint officers, as governor, deputy-governor, assistants, treasurer, secretary, captains, lieutenants, ensigns, or any of like moment, or to remove such upon misdemeanour, as also to set out the duties and powers of the said officers. That none but the general court hath power to raise money and taxes, and to dispose of lands, viz. to give and confirm proprieties.

It was further ordered, that the constable of every plantation shall, upon precept received from the secretary, give timely notice to the freemen of the plantation where he dwells, to send so many of their said members as the precepts shall direct, to attend upon publick service; and it is agreed, that no trial shall pass upon any for life or banishment, but by a jury so summoned, or by the general court.

It is likewise ordered, that there shall be four general courts held yearly, and to be summoned by the governor for the time being, and not to be dissolved without the consent of the major part of the court.

It was further ordered, that it shall be lawful for the freemen of every plantation to choose two or three of each town from every general court, to confer of and prepare such publick business as by them shall be thought fit to consider of at the next general court; and that such persons as shall be hereafter so deputed by the freemen of several plantations, to deal in their behalf, in the publick affairs of the commonwealth, shall have the full power and voice of all the said freemen derived to them, for the making and establishing of laws, granting of lands, &c. and to deal in all other affairs of the commonwealth wherein the freemen have to do, the matter of election of magistrates and other officers only excepted, wherein every freeman is to give his own voice.

Sect. 3. It was further ordered, that if any assistant, or any man deputed by the freemen to deal in publick occasions of the commonwealth, do absent himself without leave, in time of publick business, he shall be fined at the discretion of the court. [May, 1634.]

Sect. 4. The court doth entreat of the brethren and elders of every church within this jurisdiction, that they will consult, and advise of one uniform order of discipline in the churches, agreeable to the scriptures, and then to consider how far the magistrates are bound to interpose for the preservation of that uniformity and peace of the churches. [March, 1635.]

Sect. 5. Whereas it appeareth that, by the extent of the line, according to our patent, that the river of Piscataqua is within the jurisdiction of the Massachusetts, and conference

being had at several times with the said people and some deputed by the general court for the settling and establishing of order in the administration of justice there, it is now ordered by the general court holden at Boston the ninth day of the eighth month, 1641, and with the consent of the inhabitants of the said river as followeth,

Impr. That from henceforth the said people inhabiting there are and shall be accepted and reputed under the government of the Massachusetts, as the rest of the inhabitants within the said jurisdiction are.

Also, that they shall have the same order and way of administration of justice and way of keeping courts, as is established at Ipswich and Salem; also they shall be exempted from all publick charges, other than those that shall arise for or from among themselves, or from any occasion or course that may be taken to procure their own proper good or benefit.

Also, they shall enjoy all such lawful liberties of fishing, planting, felling timber, as formerly they have enjoyed in the said river.

It is further ordered, that until our commissions shall arrive at Piscataqua, those men who already have authority by the late combination to govern the people there, shall continue in the same authority and power, to be determined at the coming of the said commissioners, and not before.

Sect. 6. Whereas this court did in the year 1646 give encouragement of an assembly of the messengers of the churches in a synod, and did desire their help to draw up a confession of the faith and discipline of the churches according to the word of God, which was presented to this court and commended to the several churches, many of whom returned their approbation to the said draught in general, and divers of the churches presented some objections and doubts against some particulars in the said draught, whereupon by order of this court the said objections were commended to the consideration of the elders to be cleared and removed, who have returned their answer in writing, the court having perused the said answer, do thankfully acknowledge their learned pains therein, accounting themselves called of God especially at this time, especially when the truth of Christ is so much opposed in the world, to give their testimony to the said book of discipline, that for the substance thereof is that we have practised and do believe. [October, 1651.]

CHAPTER IV.

ACTS RESTRAINING THE PRESS.

SECT. 1. FOR preventing irregularities and abuse to the authority of this country by the printing press, it is ordered, that henceforth no copy shall be printed but by the allowance first had and obtained under the hand of captain Daniel Gookin and Mr. Jonathan Mitchel, until this court shall take further order therein. [October, 1662.]

None to print without order.

SECT. 2. For preventing of irregularities and abuses of the authority of the country by the printing press, it is ordered by this court and the authority thereof, that there shall be no printing press allowed in any town within this jurisdiction but in Cambridge, nor shall any person or persons presume to print any copy but by the allowance first had and obtained under the hands of such as this court shall from time to time empower, the president of the college, Mr. John Sherman, Mr. Jonathan Mitchell, and Mr. Thomas Shepherd, or any two of them, to survey such copy or copies, and to prohibit or allow the same according to this order; and in case of non-observance of this order, to forfeit the press to the country, and be disabled from using any such profession within this jurisdiction for the time to come; provided this order shall not extend to the obstruction of any copy which this court shall judge meet to order to be published in print. [October, 1664.]

Vote for a restraint on printing.

SECT. 3. Mr. Samuel Sewall, at the instance of some friends with respect to the accommodation of the publick, being prevailed with to undertake the management of the printing press in Boston, late under the command of Mr. John Foster deceased, liberty is accordingly granted to him for the same by this court, and none may presume to set up any other press without the like liberty first granted. [October, 1681.]

Mr. Samuel Sewall to manage the printing press in Boston.

CHAPTER V.

ACTS RESPECTING THE FISHERIES AND MARITIME AFFAIRS.

SECT. 1. IT is ordered, that such ships and vessels and other stock as shall be properly employed and adventured in taking, making and transporting of fish, according to the course of fishing voyages, and the fish itself, shall be exempt for seven years from henceforth from all country charges, provided that this order shall not extend to any other ships, vessels or other stock but only such as shall be ordinarily employed in the usual and safe seasons for fishing through the year; provided also, that this order shall not extend to such merchandize and commodities, not properly belonging to the fishing trade, as shall be returned upon the sale of any such fish. [May, 1639.]

Whereas, through the blessing of God upon this jurisdiction, the navigation and maritime affairs thereof is grown to be a considerable interest, the well management whereof is of great concernment to the publick weal, for the better ordering the same for the future, and that there may be known laws and rules for all sorts of persons employed therein according to their several stations and capacities, and that there may be one rule for the guidance of all courts in their proceedings in distributive justice,

This court doth order, and be it ordered by the authority thereof,

Minor part owners to be commanded by the major part.

SECT. 2. That whereas there is many times differences between owners of ships, ketches, barques and other vessels in setting forth their several parts, whereby damage doth accrue to the particular concernment of owners, and if not prevented may be a great obstruction of trade where there are several owners concerned, as owners in ship, ketch, barque or other vessel whatsoever used for traffick, commerce, fishing, log, board, wood or stone carriage, upon salt or fresh water, all such owners of lesser part shall be concluded, for the setting forth of his part, by the major part of the whole concerned, such owners so concluded, having notice given them of the meeting for such conclusion, if they be nigh hand; and in case of any owner refusing, or by reason of neglect or absence, or not able to provide for the setting forth his part, the master of such ship or vessel may take up upon the bottom for the setting forth of the said part, the which being defrayed, the remainder of the income of such part to be paid by the master to the said owner.

Owners refusing to sign charter party to make publick protest,&c.

SECT. 3. And in case of freightment, where any owner shall refuse to assent to the letting out of ship or vessel where he is interested, such dissenter shall manifest it by some publick act or protest before the signing of charter party, except the master or the rest of the owners, or both, conceal from him or them their actings, then his or their protest after charter party signed by themselves or agents shall be taken for legal dissent, yet not to hinder the proceed of the ship or vessel, but that those so sending her forth shall be liable to respond his part upon insurance according to the custom of merchants, which insurance is to be defalked out of that part of hire due for such owners which dissented.

Whereas masters of ships or other vessels have their owners live part in one country and part in another, whereby they have in themselves not only opportunity, and some have made use thereof in their own persons to represent the major part of the owners in the place where he comes,

Masters to have but single votes.

SECT. 4. It is therefore ordered, that such master shall not be taken to have vote in the ordering of such vessel further than his own interest, except he make it appear to the rest of the owners where he is, that he is authorised under the hands of such owners absent, and then he is to have votes according to the proportion of parts he so stands for, and the majority of parts are to carry it as before; nevertheless it is to be understood that any owner hath power to make sale of his part either to the rest of the owners or others as may be most to his own advantage, and if any master shall presume to act contrary hereunto, what damage shall be sustained by the rest of the owners the master shall be liable to make good, it being duly proved against him,

Penalty of masters and mariners' non-attendance on board.

SECT. 5. All masters taking charge, as masters of ships or other vessels, and not being sufficient to discharge his place, or that through negligence or otherwise shall embezzle the owners' or employers' stock or time, or that shall suffer his men to neglect their due attendance on board, both by day and night, especially when or whilst merchants' goods are on board, and that himself or mate be not on board every night to see good orders kept, upon defect therein such master shall be liable to pay the damage that shall accrue by such neglect, it being duly proved against him.

Masters to make particular agreement with seamen.

SECT. 6. For the masters better securing their men to them, and to prevent all coven, they shall make clear agreements with their mariners and officers for their wages, and those agreements enter into a book, and take the several men's hands thereto, a copy whereof the master as a portlige bill shall leave with their owners if required of them, before their setting sail upon the voyage; and all such agreements the master shall make good to the seamen, and such

ship or vessel as they sail in shall be liable for to make good the same.

Masters to make due provisions, &c.

SECT. 7. All masters of greater or lesser vessels shall make due and meet provisions of victuals and drink for their seamen or passengers, according to the laudable custom of our English nation, as the custom and capacity of the places they sail from will admit, upon penalty of paying damages sustained for neglect thereof.

No masters to entertain seamen not discharged, nor seamen to enter themselves, till cleared, &c.

SECT. 8. That no master shall ship any seaman or mariner that is shipped before by another master or employer upon a voyage, nor shall any seaman ship himself to any other man, until he be discharged from him that shipped him first, upon penalty of him that entertains him to pay one month's pay, that such seaman agrees for, as also of such seaman shipping himself to pay one month's pay that he agrees for, the half thereof to be paid to the use of the poor of the town or place where the offence is committed, the other half to the complainer or informer.

Masters prohibited from sailing into any port but what bound to.

SECT. 9. No master of ship or vessel shall sail into any haven or port, except necessitated thereunto by wind or weather, or for want of provision, or for security from pirates, but such port as by charter party, or his bill of lading he is bound unto, until he hath delivered his goods according to his engagement; and in case any master shall take in goods for more ports and places than one, he shall declare himself so to do to those that freight upon him, and in case he shall voluntarily go to any other port or harbour than he is obliged to as above, if damage to the merchant's goods happen thereby, such master shall make good the same, it being duly proved against him.

Masters may alter their voyages, in case.

Seaman's contracts to stand good.

SECT. 10. Any master hired out or employed by his owners upon any voyage, receiving advice from his employers, that the alteration of the voyage when they are abroad may be much for their security and advantage, by going to some other port, the master seeing meet to close with that advice, the mariners shall not hinder his proceed, unless where any of the seamen shall have made a particular contract with the master to the contrary, provided that they be not carried to stay out above one year, nor be carried to any place where they may be liable to be pressed into a service they are not willing unto.

Masters to pay wages according to agreement.

SECT. 11. Masters shall see that their officers and mariners be duly paid their wages according to agreement made with them, upon the finishing of their voyage, without delay or trouble, upon penalty of paying damages for neglect, and all costs that the seamen shall be at for recovering the same.

Whereas many times masters take in merchants' goods on board their ships or vessels upon freight, when yet they

are not meetly fitted with suitable tackling and seamen for the security of such ships or vessels and goods,

Masters, ships and seamen, to bear loss of goods damnified by their neglect or want of ground tackle.

SECT. 12. It is ordered, that in case any master of ship or vessel, after he hath laden upon his ship or vessel any merchant's goods to be transported, shall for want of sufficient ground tackle, if to be had, or because of want of sufficient men being on board, come ashore to the damage of such merchants or freighters in their goods, the ship shall be liable to make good such damages; and in case the defect appear to be in the master and men, both or either, the owners shall recover such damge from them.

Damage upon goods, when ships fall foul.

SECT. 13. Where any shipmaster hath moored his ship or vessel, none other shall come so near to him first moored as to do him damage, or receive damage by him, upon the penalty of him, so coming, to make good all the damage, and to be farther punished, if wilfulness or perverseness in the action be proved against him.

Masters running on board any ship at anchor, &c,

SECT. 14. In case any master of ship or vessel under sail shall run on board any other ship or vessel at an anchor, and damnify him, the party offending shall pay the damage; and such ship or vessel as he sails in shall be liable to arrest for the making good the damage, the damage to be judged by indifferent men, appointed by the judges thereof, unless the parties agree among themselves.

Goods thrown overboard by consent of masters and officers, to be made good by an average.

SECT. 15. In case of loss of goods by reason of throwing some overboard to ease the vessel to save the rest, the goods thrown overboard shall not be done without the master and major part of the company's consent, or at least of the officers with the master, which goods shall be brought into an average, and the whole loss to be borne by ship, and goods, and wages in proportion that are saved; the like course shall be for cutting of masts, and loss thereof, or boats, cables or anchors, as also of rigging and sails, for the safety of the whole, the merchants' goods are to bear a part of the loss.

Damage by an insufficient bottom.

SECT. 16. In case a ship or vessel at setting forth proves deficient, and gives over the voyage, the charges the merchant hath sustained in shipping and landing his goods shall be borne by the master and owners of such vessel, that presumes to take goods into an insufficient bottom.

Damage at sea.

SECT. 17. Any ship or vessel at sea, receiving damage by the master's or mariners' negligence, yet bringeth the merchant's goods home, and delivereth them according to bills of lading, he shall receive his freight, but if the goods be damnified, the master or mariners shall make good the damage.

Damage by ships breaking loose.

SECT. 18. If any ship or vessel in storm shall break loose and fall upon another, and do her damage for want of ground tackle, the ship breaking loose shall make good the damage; but if it appear the master, or mariners, or both,

are negligent of freshing their hawse, or clearing their cables, they shall pay the damage for such neglect.

Mariners absent without leave.

SECT. 19. All mariners being shipped upon a voyage, and in pay, they shall duly attend the service of the master's ship or vessel for the voyage, and not absent themselves day or night without leave from the master, upon forfeit for every offence five shillings.

Officers or mariners' unruliness.

SECT. 20. No officers or mariners shall be disorderly or unruly, to occasion disturbance in the ship or other vessel he is shipped upon, to hinder or damnify the voyage, to be proved by the master or other mariners, or both, upon penalty of paying the damage if able, and in case of inability to pay, to suffer corporal punishment, as the nature of the offence may appear to the judges, and in case master or mariners shall conceal the offences of such, and refuse to give in evidences therein, they shall be amerced or imprisoned, as the judges shall see meet.

Ignorant pilots or officers.

SECT. 21. If any shall undertake the charge of pilot, boatswain, gunner, or any other office in ship or other vessel, and not be able to discharge the duty of the place, such shall lose their wages in part or in whole, and be further punished for their presumption, as the judges shall see meet.

Watch to be kept.

SECT. 22. All mariners shall keep true watch at sea or in harbour, as the master shall appoint, upon pain of forfeit of twelve pence for every default, to be defalked out of their wages.

Mariners deserting the voyage.

SECT. 23. Any mariner that hath entered upon a voyage, and shall depart and leave the voyage, shall forfeit all his wages, one half to the poor, the other half to the master and owners, and be further punished by imprisonment or otherwise as the case may be circumstanced, to be judged by the magistrate or magistrates they are complained to, except such seaman shall shew just cause for his so leaving the voyage, and shall procure an order therefor from authority.

Runaway mariners.

SECT. 24. If any mariner shall have received any considerable part of his wages, and shall run away from the ship or vessel he belongs to, and decline the service of the master in the prosecution of the voyage, he shall be pursued as a disobedient runaway servant, and proceeded with as such a one.

Mariners entertaining without master's leave.

SECT. 25. If any mariner shall entertain any person or persons on board the ship or vessel he sails in, without the master's leave, or masters or mariners shall do it at unseasonable times, he or they shall forfeit twenty shillings, one half to the poor, the other half to the owners.

Outrage upon the master.

SECT. 26. No seaman or seamen or officer shall commit any outrage upon the master of any ship or vessel; but those so offending shall be severely punished, by fine or other cor-

poral punishment, as the fact shall appear to be circumstanced to the judges that shall hear it, and as they shall judge meet; if any officers or mariners shall combine against the master, whereby the voyage shall be diverted or hindered, or that damage thereby shall accrue to the ship and goods, they shall be punished with loss of wages, or otherwise as mutineers, as the case may require.

Ships in distress, not to be left.

SECT. 27. In case any ship or vessel be in distress at sea, by tempest or other accident, the mariners shall do their utmost endeavour to assist the master in saving ship and goods, and not desert him, without apparent hazard appear, that by their staying they may lose their lives.

Mariners to do their utmost in shipwreck to save the goods.

SECT. 28. And in case of suffering shipwreck, the mariners are without dispute, upon their getting on shore, to do their utmost endeavours to save the ship or vessel, tackle and apparel, as also the merchant's goods as much as may, out of which they shall have a meet compensation for their hazard and pains; and any upon conviction of negligence herein shall be punished. [October, 1668.]

His majesty's acts of trade and navigation to be observed, on penalty.

SECT. 29. This court being informed, by letters received this day from our messengers, of his majesty's expectation that the acts of trade and navigation be exactly and punctually observed by his majesty's colony, his pleasure therein not having been before now signified unto us either by express from his majesty or any of his ministers of state,

It is therefore hereby ordered, and by the authority of this court enacted, that henceforth all masters of ships, ketches or other vessels of greater or lesser burden arriving in or sailing from any of the ports in this jurisdiction, do without coven or fraud yield faithful and constant obedience unto and observation of all the said acts of navigation and trade, on penalty of suffering such forfeitures, loss and damage as in the said acts are particularly expressed; and the governor and council and all officers commissionated and authorised by them, are hereby ordered and required to see to the strict observation of the said acts. [October, 1677.]

Cases of admiralty.

SECT. 30. It is ordered by this court and the authority thereof, that henceforth all cases of admiralty shall be heard and determined by the court of assistants, and to be issued by the bench without jury, unless the court shall see cause to the contrary. Provided always, this act shall not be interpreted to obstruct the just plea of any mariner or merchant, impleading any person in any other court upon any matter or cause that depends upon contract, covenant, or other matter of common equity in maritime affairs, to be issued according to the known laws of this colony. [January, 1673.]

CHAPTER VI.

ARTICLES OF CONFEDERATION OF THE NEW ENGLAND COLONIES.

ARTICLES OF CONFEDERATION BETWEEN THE PLANTATIONS UNDER THE GOVERNMENT OF THE MASSACHUSETTS, THE PLANTATIONS UNDER THE GOVERNMENT OF NEW PLYMOUTH, AND THE PLANTATIONS UNDER THE GOVERNMENT OF CONNECTICUT.

WHEREAS we all came into these parts of America with one and the same end and aim, viz. to advance the kingdom of our Lord Jesus Christ, and to enjoy the liberties of the gospel in purity with peace, and whereas in our settling, by a wise providence of God, we are further dispersed upon the sea coasts and rivers than was first intended, so that we cannot according to our desire with conveniency communicate in one government and jurisdiction, and whereas we are compassed with people of several nations and strange languages, which hereafter may prove injurious to us and our posterity, and forasmuch as the natives have formerly committed sundry insolencies and outrages upon several plantations of the English, and have several times combined themselves against us, and seeing by reason of our distance from England, our dear native country, we are hindered both from that humble way of seeking advice and reaping those comfortable fruits of protection which we might otherwise well expect, we therefore account it our duty as well as safety to enter into a confederation for mutual help and succour in all our future concernments, that as in nation and religion, so in other respects we be and continue one, according to the terms and true meaning of the ensuing articles:

1. Wherefore it is agreed and concluded by and between the parties or jurisdictions abovenamed, and they do jointly and severally by these presents agree and conclude, that they all be and henceforth to be called by the name of the united colonies of New England.

2. The said united colonies, for themselves and their posterity, do jointly and severally hereby enter into a firm and perpetual league of friendship and amity, mutual advice and succour upon all just occasions, both for preserving and propagating the truth and liberties of the gospel and for their own mutual safety and welfare, provided notwithstanding that the power of determination of an offensive war properly

so called, so as to engage the colonies therein, shall be in the several general courts of the aforementioned confederates.

3. It is agreed, that the plantations which at present are or hereafter shall be settled within the limits of the Massachusetts shall be for ever under the government of the Massachusetts, and have peculiar jurisdiction amongst themselves as an entire body, and that Plymouth and Connecticut each of them in all respects have the like peculiar jurisdiction and government within their limits, according to their respective letters patent from his majesty, provided that no other jurisdiction shall hereafter be taken in as a distinct head or member of this confederation, nor shall any other plantation or jurisdiction in present being, and not already in combination or under the jurisdiction of any of these confederates, join in one jurisdiction without the consent of the several general courts of the abovenamed confederates.

4. It is also agreed, that for the managing and concluding of all affairs proper to and concerning the whole confederation not excepted against in these articles, two commissioners shall be chosen by and out of each of these three jurisdictions, viz. two for the Massachusetts, two for Plymouth, and two for Connecticut, being all in church fellowship with us, who shall bring full power from their general courts respectively to hear and examine, and weigh and determine the same; but if these six commissioners when met shall not all agree, yet it is concluded that any five of the six agreeing shall have power to settle and determine the case in controversy, but if five do not agree, that then such propositions with their reasons so far as they have been debated be sent and referred to the several general courts, and if by all the said courts there be a concurrence in the matter so referred, then to be accordingly prosecuted by all the confederates and all their members.

5. It is further agreed, that the commissioners for the united colonies shall meet but once in three years except in cases extraordinary, which meeting shall ever be on the first Thursday in September, and that the next meeting after the date of these presents shall be at Plymouth, which shall be accounted the first meeting, the second at Boston, the third at Hartford, the fourth at Boston, the fifth at Hartford, and so the meeting will be but once in fifteen years at Plymouth, and double so often in the other colonies, if in the mean time some middle place be not found out and agreed on, which may be commodious for all.

6. It is further agreed, that at each meeting of these six commissioners, whether ordinary or extraordinary, they may choose their president out of themselves, whose office and work shall be to take care and direct for order and comely carrying of all proceedings in the present meeting; but he shall be invested with no such power by which he

may hinder the proposing or progress of any business, or any way cast the scales otherwise than in the present articles is agreed.

7. It is also agreed, that the commissioners for this confederation hereafter at their meetings, whether ordinary or extraordinary, as they may have commission or opportunity, may consult of and propose to the several general courts to be by them allowed and established, such orders, in general cases of a civil nature wherein all the plantations are interested, for preserving peace amongst themselves and preventing as much as may be all occasions of war or differences with others, as about the free and speedy passage of justice in each jurisdiction to all the confederates equally as to their own, receiving those that remove from one plantation to another, how all the jurisdictions may carry towards the Indians, that they neither grow insolent nor be injured without due satisfaction, lest war break in upon the confederates through such miscarriages; it is also agreed, that if any servant run away from his master into any other of these confederated jurisdictions, that in such case, upon the certificate of one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant shall be delivered either to his master or any other that pursues and brings such certificate or proof, and that upon the escape of any prisoner whatsoever or fugitive for any criminal cause, whether breaking prison or getting from the officer, or otherwise escaping, upon the certificate of one magistrate of the jurisdiction out of which the escape is made, that he was a prisoner, or such an offender at the time of the escape, the magistrates or some of them of that jurisdiction where for the present the said prisoner or fugitive abideth, shall forthwith grant such a warrant as the case will bear for the apprehending any such person, and the delivering of him or her into the hand of the pursuer, and if help be required it shall be granted, he paying the charge thereof.

8. It is further agreed, that for the disposing of the Indian stock for the future, the choice of the commissioners of the several colonies being annually as formerly, the commissioners of the Massachusetts with such others as shall be present, or any three of the commissioners, meeting yearly at Boston or elsewhere as they shall agree, and at the usual time, they may do any act for the managing and ordering of that affair as though all the commissioners were present, and what they shall do herein they shall keep a true record thereof, and transmit the account of the same from time to time to the triennial meeting of the commissioners.

9. It is agreed also by these confederates, that the charge of all just wars, whether offensive or defensive, upon what part or member of this confederation soever they fall, shall

both in men, provisions and all other disbursements, be borne by all the parts of the confederation in different proportions according to their different abilities, viz. that the rule for proportioning men and raising of monies for the defraying of such charges as may from time to time arise upon any war defensive or offensive, begun and carried on according to the articles of confederation, shall be as follows: the Massachusetts one hundred, Plymouth thirty, Connecticut sixty; and this rule to continue for fifteen years next coming after the beginning of the meeting of the commissioners to be held at Plymouth in September next; and then if any one or more of the confederates shall apprehend the abovesaid proportion to be unequal, that then matters shall be again considered by the commissioners, and what they shall agree upon shall be presented to the several general courts for their acceptance and confirmation, each jurisdiction or plantation being left to their own just course and custom of rating themselves and people, and that according to the different charge of each jurisdiction and plantation; the whole advantage of the war, if it please God so to bless their endeavours, whether it be in lands, goods or persons, shall be proportionably divided amongst the said confederates.

10. It is further agreed, that if any of these jurisdictions or any plantation under them be invaded by any enemy whomsoever, upon any notice or request of any three magistrates of that jurisdiction so invaded, the rest of the confederates without any further meeting or expostulation shall forthwith send aid to the confederate in danger, but in different proportions, viz. the Massachusetts one hundred men sufficiently armed and provided for such a service and expedition, Plymouth thirty men so armed and provided, and Connecticut sixty men so armed and provided, or any less number if less be required, according to this proportion; but if such confederate in danger may be supplied by their next confederate not exceeding the numbers hereby agreed, they may crave help there and seek no further for the present, the charge to be borne by the several colonies according to the proportions abovesaid, and at their return to be victualled and supplied with powder and shot if there be need for their journey, by that jurisdiction that employed or sent for them; but in any such case of sending men for present aid, whether before or after such order or alteration, it is agreed that at the meeting of the commissioners for this confederation, the cause of such war or invasion be duly considered, and if it appear that the fault lay in the parties so invaded, that then that jurisdiction or plantation make just satisfaction both to the invaders whom they have injured, and bear all the charges of the war themselves, without requiring any allowance from the rest of the confederates towards the same.

11. And for that the justest war may be of dangerous consequence especially to the smaller plantations in those united colonies, it is agreed, that neither the Massachusetts, Plymouth nor Connecticut, nor any of the members of any of them shall at any time hereafter begin, undertake or engage themselves or this confederation in any war whatsoever, sudden exigences with the necessary consequences thereof excepted, which are also to be moderated as much as the case will permit, without the consent of the several general courts of the united colonies.

12. It is also agreed, that in case of any sudden exigences or other weighty occasions requiring the meeting of the commissioners before the ordinary time, the governor or any three magistrates of any of the confederate jurisdictions may summon a meeting of the commissioners, briefly signifying the occasion thereof and the time and place of the meeting, which shall be accordingly attended by the commissioners of all the confederate jurisdictions, and when met they may adjourn to any other time or place as they shall see meet.

13. It is also agreed, for settling of vagabonds and wandering persons removing from one colony to another, to the dissatisfaction and burden of the places where they come, as daily experience sheweth us, for the future it is ordered, that where any person or persons shall be found in any jurisdiction to have had their abode for more than three months, and not warned out by the authority of the place, and in case of the neglect of any person so warned as abovesaid to depart, if he be not by the first opportunity that the season will permit sent away from constable to constable, to the end that he may be returned to the place of his former abode, every such person or persons shall be accounted an inhabitant where they are so found, and by them governed and provided for as their condition may require, and in all such cases the charge of the constables to be borne by the treasurer where the said constables do dwell.

14. It is agreed, that if any of the confederates shall hereafter break any of these present articles, or be in any other way injurious to any of the confederate jurisdictions, such breach of agreement or injury shall be duly considered and ordered by the commissioners for the other jurisdictions, that both peace and this present confederation may be preserved without violation.

15. Whereas in the former articles agreed upon May the 29th, 1643, for the united colonies above named, Newhaven is therein mentioned, and was owned as a distinct confederate, and is by these included and concluded as one with Connecticut, the abovesaid union shall always be interpreted as by their own concession and not otherwise.

Now whereas for many years past upon divers good considerations there was a confederation agreed upon by the ancient English colonies under his majesty's authority in New England for mutual help, support and defence, as also for the better maintaining his majesty's interest against any opposition or incursion of the barbarous natives and others, as appeareth by articles that were agreed upon in the year 1643, and are upon record to be seen, whereby the said colonies have been so united as have proved very beneficial to all his majesty's subjects in these parts for their peace and security, and whereas the several general courts of the said colonies have seen cause to renew the said confederation, with some necessary alteration and addition to the said articles, as is more fully expressed in the articles above written, and also whereas the general court for the Massachusetts colony, by their commission dated in Boston in August the 30th, 1672, have nominated Thomas Danforth, Esq. and Major William Hawthorne, Esq. their commissioners investing them with full power and authority to sign, ratify and confirm the above recited articles of confederation, and in like manner the general court held at Plymouth June the 5th, 1672, have nominated Thomas Prence, Esq. and Major Josias Winslow, Esq. investing them with like power, and the general court of Connecticut colony held at Hartford May the 9th and June the 26th, 1672, have in like manner nominated John Winthorpe, Esq. and James Richards, Esq. investing them with like power, the abovesaid commissioners being assembled at Plymouth September the 5th, 1672, having read and examined these abovewritten articles, do according to their said commissions, and by virtue thereof, clearly and absolutely ratify and confirm the same, for the re-establishing of a perpetual confederation between the abovenamed colonies, as was the declared intentions of the former articles; in confirmation whereof, the commissioners abovenamed, by the authority granted unto them from their several general courts, and in their name and stead have hereunto subscribed their hands, in Plymouth, September the 5th, 1672.

JOHN WINTHORPE,
JAMES RICHARDS,
THOMAS PRENCE,
JOSIAS WINSLOW,
THOMAS DANFORTH,
WILLIAM HAWTHORN.

CHAPTER VII.

SUNDRY QUESTIONS BY THE GENERAL COURT, PUT TO THE ELDERS RESPECTING THE POWERS OF GOVERNMENT, PENALTIES, &c. A. D. 1644.

QUESTION. WHETHER the magistrates are by patent and elections of the people the standing council of the commonwealth in the vacancy of the general court, and have power accordingly to act in all cases subject to government, according to the said patent, and the laws of this jurisdiction; and when any necessary occasions call for action from authority, in cases where there is no particular express law provided there, to be guided by the word of God, till the general court give particular rules in such cases.

ANSWER. The magistrates are by patent and election of the people the standing council of commonwealth in the vacancy of the general court, and accordingly act in all cases pertaining to government according to the patent and the laws made by the said general court of this jurisdiction; this answer is grounded upon sundry passages in the said patent, where it is said that the governor, deputy-governor and assistants shall apply themselves to take care for the best disposing, and ordering of the general businesses and affairs of, for and concerning the lands and premises, and the plantation thereof, and the government of the people there; also it is said that the governor, deputy-governor and assistants, or any such number of them as there is expressed, shall be a full and sufficient court for the handling, ordering, and despatching of all such businesses and occurrences as shall from time to time happen, touching, or concerning the said company or plantation; and it is said, that it is in the power of the general court to make laws and ordinances for the good and welfare of the company; they may make and establish wholesome laws, statutes and ordinances, for the settling the forms and ceremonies of government and for managing and styling of all sorts of officers, superiour or inferiour, and for the distinguishing and setting forth of the several duties, powers and limits in every such office and place.

2dly. We do not find that by the patent they are expressly directed to proceed according to the word of God; but we understand that by a law, or liberty of the country, they may act in cases wherein as yet there is no express law, so that in such acts, they proceed according to the word of God.

Question. Whether the governor and assistants have any power by patent to dispense justice in the vacancy of the general court, without some law or order of the same, to declare the same?

Answer. We do not find in the commonwealth now constituted by the patent, that the governor and assistants have any power to dispense justice in the vacancy of the general court, without some law or order of the same, as the rule of their administration; which we conceive it were meet to be expressed, for the regulating of all particulars as far as may be, where such cannot be had, to be supplied by general rules.

Question. Whether any general court hath not power in particular cases to choose any commissioners, either assistants or freemen, exempting all others, to give them commission, to set forth their power and places. By any particular case, we mean in all things, and in the choice of all officers that the commonwealth stands in need of between election and election, not taking away the people's liberties in elections, nor turning out any officer so elected by them without showing cause?

Answer. If the terms, all things, imply or intend all cases of constant judicature and counsel, we answer negatively, viz. that the general court hath not power by patent, in all such cases, to choose any officers or commissioners, either assistants or freemen, exempting, that is excluding all others, to give them commission, to set forth their power and places; because it would then follow that the magistrates might be excluded from all cases of constant judicature and counsel, which are their principal work, whereby also the end of the people's election would be made frustrate.

2dly. But if these terms, all things, imply, and intend cases, whether occasional or otherwise, belonging neither to constant judicature nor council, we answer affirmatively.

The general court hath power by patent, in such particular cases, to choose any officers and commissioners, either assistants or freemen, exempting all others, to give the commission, to set forth their power and places, which yet we understand with the distinction, &c. that if the affairs committed to such officers and commissioners be of general concernment, we conceive the freemen, according to patent, are to choose them, the general court to set forth their power and places; but if the affairs committed to such officers or commissioners be of merely particular concernment, then we conceive the general court may both choose them, and set forth their power and places.

Whereas we give cases of constant judicature and counsel to the magistrates, we thus interpret the word counsel. Counsel consists of care and action. In respect of care, the magistrates are not limited. In respect of action, they are

to be limited by the general court, as the supreme council. Finally, it is our humble request, that in case any difference grow in the general court between magistrates and deputies, either in those or any like weighty cases, which cannot be presently issued with mutual peace, that then both parties will be pleased to defer the same to further deliberation, for the honour of God and of the court.

The 12th of the 9th month, 1644.

Question 1. Whether the deputies in the general court have judicial and magistratical power?

2. Whether by patent, the general court, consisting of magistrates and deputies, as a general court, have judicial or magistratical authority?

Answer 1. The patent in express words giveth full power and authority, as to the governor and assistants, so to the freemen also, assembled in general court.

2. Whereas there is a threefold power of magistratical authority, legislative, judicative, and consultive, or directing of the publick affairs of the country, for provision and protection; the first of these, namely, legislative, is expressly given to the freemen jointly with the governor and assistants. Consultive or directive power of the publick affairs of the commonwealth, for provision and protection, is granted also by patent to the freemen, as to the governor and assistants. But now for power, a judicature, if we speak of the constant and usual administration thereof, we do not find that it is granted to the freemen or deputies in the general court, either by the patent, or by the election of the people, or by any law of the country. But if we speak of the occasional administration thereof, we find power of judicature administrable by the freemen jointly with the governor and assistants, upon a double occasion, first, in case of defect or delinquency of a magistrate, we find the whole general court, of governor, deputy-governor, assistants and freemen, may proceed to remove him.

Secondly. If by the law of the country, there lie any appeal to the general court, or any other special cause be referred to their judgment, it will necessarily infer, that in such cases, by such laws, the freemen jointly with the governor and assistants have power of judicature, touching the appellants, and cause of the appeal, and those reserved cases.

What we speak of the power of freemen by patent, the same may be said of the deputies, so far forth as the power of the freemen is delegated to them by order of law.

Question 3. Whether we may warrantably prescribe certain penalties to offences which may probably admit variable degrees of guilt?

4. Whether a judge be bound to pronounce such sentence as a positive law prescribes, in case it be apparently above or beneath the merit of the offence?

Answer 1. Certain penalties may, and ought to be prescribed to capital crimes, although they may admit variable degrees of guilt, as in case of murther upon prepensed malice, and upon sudden provocation, there is prescribed the same death in both; though murther upon prepensed malice be a far greater guilt, than upon sudden provocation, Num. xxxv. 16, 17, 18, with 20, 21; also in crimes of less guilt, as in theft, though some theft be of greater guilt than others, as for some man to steal a sheep who hath less need, is of greater guilt than for another who hath more need; the Lord prescribed the same measure of restitution in both, Exod. xxii.

2. In case variable circumstances of an offence do so much vary the degrees of guilt, as that the offence is raised to an higher nature, there the penalty must be varied to an higher answerable proportion. The striking of a neighbour may be punished with some pecuniary mulct, when the striking of a father may be punished with death. So any sin committed with an high hand, as the gathering of sticks on the sabbath day, may be punished with death, when a lesser punishment might serve for gathering sticks privily, and in some need.

3. In case circumstances do so vary a sin, as that many sins are complicated, or wrapped up in it, the penalty is to be varied according to the penalty of those several sins; a single lie may be punished with a less mulct, than if it be told before the judgment seat, or elsewhere, to the damage of any person, whether in his good name by slander, or in his estate by detriment in his commerce, in which case a lie, aggravated by circumstances, is to be punished with respect both to a lie and a slander, and to the detriment which another sustaineth thereby.

4. In case that the circumstances which vary the degrees of guilt concern only the person of the offender, as whether it was his first offence or customary, whether he was enticed thereto or the enticer, whether he were principal or accessory, whether unadvised or witting and willing, &c. there it were meet that the penalties should be expressed, with a latitude whereof the lowest degree to be expressed, suppose five shillings, or as the case may be, five stripes; and the highest degree twenty shillings, or forty shillings, or stripes, more or less, within which compass or latitude it may be free to a magistrate to aggravate or mitigate the penalty, as the circumstances do aggravate or alleviate the offence; yet even here care should be taken that a magistrate attend in his sentence as much as may be to certain rule in those circumstances, lest some person whose sins be alike circumstantiated with another, if his punishment be

not equal the one with the other, one may think himself more unequally dealt withal than another.

5. In those cases wherein a judge is persuaded in conscience that a crime deserveth a greater punishment than the law inflicteth, he may lawfully pronounce sentence according to the present penalty of the law, because he hath no power committed to him by law to go higher; but where the law may seem to the conscience of the judge to inflict a greater penalty than the offence deserveth, it is his part to suspend his sentence by conference with the lawgivers, till he find liberty either to inflict the sentence or to mitigate it.

6. The penalties of great crimes may sometimes be mitigated by such as are in chief power, which in this country is the general court, out of respect to the publick good service which the delinquent hath done to the state in former times; so Solomon mitigated the punishment of Abiathar, for his service done to his father formerly. 1 Kings ii. 26, 27.

The 13th of the 9th month, 1644.

Question 1. Whether the distinction of power of authority in the magistrates, and only liberty of counsel in the people, be according to the patent, with respect to the magistrates and deputies in the general court?

Answer. We conceive that by patent, as the people have liberty of counsel, so they have also other power of authority in such manner as we have expressed in our answer to the two first questions sent unto us by our honoured magistrates.

Question 2. Whether the general court, consisting of magistrates and deputies, be not the chief power of this commonwealth; and to describe the power of magistracy, and prescribe laws to all, and do all other acts which belong to such a power?

Answer. The general court, consisting of the magistrates and deputies, is the chief civil power of this commonwealth, so as to describe the power of the magistracy and to preserve, in a civil way, laws unto all not repugnant to the laws of God nor the patent, nor to the fundamental laws and liberties established in the commonwealth, and accordingly may do all other acts which belong to such a power, as namely, both acts of counsel tending to the provision and protection and welfare of the whole body, and also acts of judgment so far as according to our answer to the two former questions of our honoured magistrates, is by the patent or choice of the people, or by the laws of the commonwealth reserved to them, and seated in them.

Question 3. Whether our government be a pure aristocracy, or mixed with a democracy; if mixed, whether it should not be mixed in all administrations of the same?

Answer. Our answer is, not a pure aristocracy, but mixed of an aristocracy and democracy in respect of the general court; yet it followeth not necessarily thereupon, that it should be mixed in all other courts and administrations thereof, because our form (as all other forms of civil government) is the ordinance of man; therefore as it was free to make it mixed or simple, so also to make it mixed in the general court and unmixed in others, according to the pleasure of the ordainers thereof. Accordingly our patent, notwithstanding it hath made our government mixed, in respect of the general court, yet it seems to have instituted subordinate administrations of justice, to be discretionally dispensed by the court of assistants? yet even in these courts there is some place for a democratical dispensation in respect of the jurors.

It was voted, and all the answers given in by the reverend elders to the several questions were approved just and true answers to satisfaction, except such as are not put to vote:

That the assistants have no power to act in judicature without some law of the general court to declare the rule.

That the assistants have no power to act in judicature without some leave, either particularly expressed, or in general terms in defect thereof enacted by the general court as the rule of their administration.

That the general court, consisting of magistrates and deputies, is the chief civil power of this commonwealth, and may act in all things belonging to such a power, both concerning counsel in consulting about the weighty affairs of this commonwealth and concerning making of laws; also concerning judicature, in orderly impeaching, removing and sentencing any officer, even the highest, according to law; likewise in receiving appeals, whether touching civil or criminal cases, wherein appeals are or shall be allowed by the general court.

That no magistrate hath power to vary from the penalty of any law, either to mitigate or exceed the same.

That no magistrate hath power to vary from the penalty expressed in any law, either to mitigate or exceed the same, without consulting with the general court.

That the patent in express words giveth full power and authority as to the governor and assistants, so to the freemen also assembled in the general court.

That that full power, which is described by the patent and granted to the general court, is given not only to the governor and assistants, but also to the freemen there assembled, and acting with common consent.

That certain penalties may and ought to be prescribed in diverse cases, although the offences admit of variable degrees of guilt.

CHAPTER VIII.

AN ORDER FOR THE USE OF ARMS AMONG YOUTH FROM TEN TO SIXTEEN YEARS OF AGE.

Whereas it is conceived, that the training up of youth to the art and practice of arms will be of great use in the country in divers respects, and among the rest that the bows and arrows may be of good concernment in defect of power upon any occasion,

It is therefore ordered, that all youth within this jurisdiction, from ten years old to the age of sixteen years, shall be instructed by some one of the officers of the band, or some other experienced soldier, whom the chief officer shall appoint, upon the usual training days, in the exercise of arms, as small guns, half-pikes, bows and arrows, &c. according to the discretion of the said officer or soldier, provided that no child shall be taken to this exercise against their parents' mind; this order to be of force within one month after the publication hereof. [May, 1645.]

CHAPTER IX.

AN ACT FOR TRANSPORTING OF PART OF THE MILITIA OF THE PROVINCE, OR OBLIGING THEM TO MARCH TO THE RELIEF OF THE NEIGHBOURING PROVINCES OR COLONIES.

Forasmuch as in this time of war there may be occasion for the raising of soldiers, and transporting or marching of them out of the limits of this province into the neighbouring provinces and colonies of New Hampshire, Rhode Island, Connecticut, Narragansett or New York, for the prosecution of the French or Indian enemy, and the defence of their majesties' subjects and interests,

Be it enacted and ordained by the governor, council and representatives, convened in general court, and it is enacted by the authority of the same, that in the vacancy of the general assembly it shall be in the liberty of his excellency the present governor, by and with the advice and consent of the council, to raise and transport such part of the militia

of this province as they shall find needful, or oblige them to march into any of the beforenamed provinces or colonies, for the ends aforesaid, at any time or times, within the space of six months next, and at no time afterward, without their free and voluntary consent, or the consent of the great and general court or assembly; any thing in this present act contained to the contrary thereof in any wise notwithstanding. [June, 1692.]

CHAPTER X.

AN ACT AGAINST CONJURATION, WITCHCRAFT, AND DEALING WITH EVIL AND WICKED SPIRITS.

For more particular direction in the execution of the law against witchcraft,

Sect. 1. Be it enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, that if any person or persons shall use, practise or exercise any invocation or conjuration of any evil and wicked spirit, or shall consult, covenant with, entertain, employ, feed or reward any evil and wicked spirit to or for any intent or purpose, or take up any dead man, woman or child out of his, her or their grave, or any other place where the dead body resteth, or the skin, bone, or any other part of any dead person to be employed or used in any manner of witchcraft, sorcery, charm or enchantment, or shall use, practise or exercise any witchcraft, enchantment, charm or sorcery, whereby any person shall be killed, destroyed, wasted, consumed, pined or lamed in his or her body, or any part thereof, that then every such offender or offenders, their aiders, abettors and counsellors, being of any of the said offences duly and lawfully convicted and attainted, shall suffer pains of death as a felon or felons.

And further, to the intent that all manner of practice, use or exercise of witchcraft, enchantment, charm or sorcery should be henceforth utterly avoided, abolished and taken away,

Sect. 2. Be it enacted by the authority aforesaid, that if any person or persons shall take upon him or them by witchcraft, enchantment, charm or sorcery to tell or declare in what place any treasure of gold or silver should or might be found or had in the earth or other secret places, or where goods or things lost or stolen should be found or become, or

to the intent to provoke any person to unlawful love, or whereby any cattle or goods of any person shall be destroyed, wasted or impaired, or to hurt or destroy any person in his or her body, although the same be not effected and done, that then all and every such person and persons so offending, and being thereof lawfully convicted, shall for the said offence suffer imprisonment by the space of one whole year, without bail or mainprize, and once in every quarter of the said year shall in some shire town stand openly upon the pillory by the space of six hours, and there shall openly confess his or her error and offence, which said offence shall be written in capital letters and placed upon the breast of said offender.

And if any person or persons, being once convicted of the same offence, and shall again commit the like offence, and being of any of the said offences the second time lawfully and duly convicted and attainted as is aforesaid, shall suffer pains of death as a felon or felons. [October, 1692.]

CHAPTER XI.

AN ACT FOR REGULATING THE BUILDING OF SHIPS.

FORASMUCH as the building of ships is a business of great importance for the common good, and therefore according to the course and practice of their majesties' kingdom of England, suitable provision is necessary to be made, that it be well performed,

Vessels of thirty tons or upwards to be surveyed by warrant from a justice of peace.

SECT. 1. Be it therefore enacted by the governor, council and representatives, convened in general assembly, and by the authority of the same, that when and so often as any ship or vessel of thirty tons or upwards is to be built and set up in any town or place within this province, before any plank be brought on, the builder or owner shall repair unto one of the next justices of the peace within the same county, who upon request made is hereby empowered to appoint and authorise one or more able shipwrights to be surveyors of the said building, and of all the materials and workmanship in and about the same from time to time, as often as the builder or owner sees cause to call them, who are to take care that all the materials be sound, sufficient and suitable for the occasion, and that the works be done and performed strong, substantial, and according to the rules of their art, and to direct that all insufficient and defective timbers, plank, or

other materials be taken out and amended, no timber or plank of oak to be allowed other than white oak, which surveyors so appointed shall have an oath administered unto them, to be faithful and indifferent between the builder and the owner.

Builder's penalty for neglect of amendment.

SECT. 2. And it is further enacted by the authority aforesaid, that if any builder, upon the advice and direction of such surveyor or surveyors, shall neglect to reform and amend what is judged to be defective or amiss in any materials or workmanship, shall forfeit and pay the sum of five shillings per diem to the use of the poor of that town where such vessel shall be in building, until the defects be amended, being convicted of such neglect before one or more justices of the peace, unless such justice or justices upon hearing of the builder shall see cause to allow him some further reasonable time for doing of the same; and if any builder shall bring to and fasten any plank upon any ship or vessel of the burden aforesaid, before a warrant of survey be obtained as aforesaid, and the surveyor or surveyors have been to view the frame, every builder offending herein shall forfeit and pay the sum of ten pounds, the one moiety thereof to the use of their majesties for support of the government of the province and contingent charges thereof, and the other moiety to him or them that shall inform, and sue for the same, by bill, plaint or information in any of their majesties' courts of record.

Penalty for neglect of procuring a survey.

Surveyor's allowance.

SECT. 3. And it is further enacted by the authority aforesaid, that when any surveyor or surveyors are called upon by the builder or owners to survey the work or materials, as is provided in this act, every such surveyor shall have for his care and attendance when called three shillings for every survey, which charge of surveying is to be borne by the builder when he is defective, but when the builder is not in fault, then by the owner or owners, and in case of travel out of town to be further allowed for their time and necessary charges. [May, 1693.]

CHAPTER XII.

AN ACT FOR LEVYING SOLDIERS.

FOR the more speedy levying of soldiers for their majesties' service, and the better to prevent disappointments

through default in any improved therein, or by non-appearance of such as shall be appointed to said service,

Penalty for not attending upon an impress.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that every person liable and fit for service, being orderly detached or impressed for their majesties' service by virtue of a warrant from the captain or chief officer of the company or troop whereto he belongs, and being touched or commanded in their majesties' name to attend said service, shall by himself or other meet person in his room, to the acceptance of his captain or chief officer, attend the same at time and place appointed, on pain of suffering three months imprisonment, to be committed by mittimus from any justice of the peace, or chief officer of the company where no justice of the peace is in the town, upon conviction of such neglect, unless such person within the space of two hours next after his being impressed shall pay down to his captain or chief officer that granted the warrant the sum of five pounds, to be improved for the procuring and fitting out of suitable persons on that present service, if timely to be had, or otherwise to be remitted by said officer unto the treasurer or selectmen of the town where such person dwells, to the use of said town, for and towards a stock of arms and ammunition; and all persons so paying the said fine of five pounds shall be esteemed to have served, and be no further or otherwise liable to any after impress than those that actually go forth in service at that time.

Fine how to be employed.

Penalty for officer's neglect of sending out warrants.

Every chief officer of a regiment who shall neglect or not do his utmost to send forth his warrants seasonably for the detaching or impressing so many men as shall be required, shall pay twenty pounds fine; and every captain or other chief officer of any company or troop that shall not use his utmost endeavour, according to warrant to him directed, to detach or impress, or cause to be detached or impressed, and have so many men at the place of rendezvous in time as by warrant is required, shall pay ten pounds fine; and every officer or soldier that shall receive a warrant from his captain or chief officer for the detaching or impressing of men shall forthwith attend and perform the same on pain of five pounds fine; and all persons are required to be aiding and assisting to him in the execution of such warrant, on the penalty of forty shillings; the said fines or sums of money respectively to be unto their majesties for and towards the support of the government, and to be recovered by bill, plaint or information in any court of record.

Penalty for not attending warrants of impress, &c.

Penalty on persons refusing to assist in execution thereof.

Penalty on persons avoiding the im-

SECT. 2. And be it further enacted by the authority aforesaid, that all soldiers shall be in pay from the time of their being detached or impressed till they be orderly discharged, and have reasonable time allowed them to repair

to their usual places of abode; and if any person directly or indirectly, by counsel or otherwise, prevent the impressing, conceal any person impressed, or knowingly further his escape, such person shall pay as a fine forty shillings; and all persons lawfully empowered to press may pursue any person that hides from the press, or makes his escape, and may by himself or deputy impress such person in any place within the province; and if any impressed for their majesties' service shall remove or go out of the province, and not attend the service as required, such person at his return shall be apprehended by warrant from any justice of the peace, and by him committed to the common gaol of the county where he shall be taken, to suffer three months' imprisonment, and before he be released shall also pay a fine of five pounds to the use of the town whereto he belonged at the time of his impressing.

press, and any furthering their escape.

If any person authorised to detach or levy soldiers for their majesties' service shall exact or take any reward to discharge or spare any from said service, he shall forfeit ten times so much as he shall so exact or take, one moiety thereof unto their majesties for and towards the support of the government, and the other moiety to him or them that shall inform and sue for the same, by action, bill, plaint, or information in any court of record.

Persons authorised to impress not to discharge or spare any for reward.

No soldier retained in their majesties' service and borne in their pay, in garrison or otherwise, shall depart without license of his commander, on pain of being proceeded against as a felon, and shall suffer the pains of death; and every justice of peace within his precinct is hereby authorised and required to cause all such deserters or runaway soldiers, which he shall know or be informed of, to be apprehended and secured in order to trial at the next assizes, to be holden for the same county where they shall be taken.

Felony for any soldier to desert his post.

Justice of the peace to apprehend deserters, &c.

Sect. 3. And further it is enacted, that all such soldiers and seamen that have been wounded in their majesties' service within this province, and are thereby maimed or otherwise disabled, and had yearly pensions allowed them by the former government for their relief, shall have the continuance of the same, during their abode in this province, to be paid them out of the publick treasury; and all such soldiers and seamen as at any time hereafter shall be maimed or otherwise disabled by any wound received in their majesties' service within this province, shall be relieved out of the publick treasury, as this great and general court shall order.

Pensioners.

If any soldier shall lose his arms in their majesties' service, not through his own neglect or default, such loss shall be borne by the publick; and in case any soldier be furnished with arms for any expedition in said service, he shall allow out of his wages four pence per week for the same, and return such arms, or otherwise pay the value thereof.

Loss of arms.

Allowance for use of arms.

Penalty for dismissing any person retained, and assuming another for gain.

Every captain or other chief officer that dismisseth any person retained and assumeth another for gain, such captain or other chief officer shall forfeit twenty pounds to their majesties for and towards the support of the government, to be recovered as aforesaid.

Provided that this act, nor any clause or article thereof, shall continue in force any longer than the present war with the French, any thing therein contained to the contrary thereof notwithstanding. [November, 1693.]

CHAPTER XIII.

AN ACT IN ADDITION TO THE ACT FOR LEVYING OF SOLDIERS, AND FOR THE BETTER RAISING OF THEM OUT OF THE MILITIA, FOR HER MAJESTY'S SERVICE IN TIME OF WAR.

WHEREAS it has been found by often experience, that when warrants have been issued for the detaching or impressing of soldiers for the defence of the country, the ablest and fittest for service have absconded and hid themselves from the impress, by means whereof the officers have been necessitated to send persons less capable, to the great dishonour and disadvantage of the service, and discouragement of the officers appointed to conduct and lead them forth, for remedy whereof,

Commission officers to take a list of the names of one fourth part at least of the soldiers under them fit for her majesty's service.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the commission officers of each military company and troop belonging to the respective regiments of militia within this province shall forthwith, and so from time to time as occasion may require, make and keep a fair list of one quarter part at least of the soldiers in their company or troop, such as are most able and fit for service; and the captain or chief officer by himself, his sergeant or other officer, shall give notice to every such soldier of his being enlisted, and require him to be always in readiness and completely armed to be sent forth and march into the service against the enemy when he shall be thereto commanded, so that when and so often as the captain general or commander in chief for the time being shall send forth his warrants for the detaching or impressing of soldiers for her majesty's service and defence of the province, they may speedily be supplied out of the men so enlisted.

SECT. 2. And be it further enacted by the authority aforesaid, that if any soldier enlisted as aforesaid shall abscond himself or not make his appearance at such time and place as his captain or chief officer of such company or troop shall appoint, upon twenty-four hours notice given him thereof, or left in writing at his house, or usual place of abode, such soldier failing of appearance shall forfeit and pay the sum of five pounds, to be levied on his body, goods or chattels by warrant of distress from two justices of the peace, or court of general sessions of the peace, within the same county, upon conviction thereof, by the oath of the captain or chief officer, and of the officer by whom the notice was given, or left in writing as aforesaid, unless such soldier at the time of leaving such writing of notice for his appearance as aforesaid was then out of the town by knowledge and license of his captain or chief officer; and in case no sufficient distress can be found wherewith to satisfy the said fine or forfeiture, the justices of the court of general sessions of the peace within the county are hereby empowered to dispose of the offender in service to some of her majesty's English subjects within this province for such reasonable time as the said court shall think fit.

Penalty on such as shall abscond after being so enlisted.

All fines and forfeitures arising by virtue of this act to be to and for the use of the company or troop respectively whereto such offender does belong, and to be paid in to the clerk thereof for the purchasing of arms and ammunition as the commission officers shall direct.

Fines and forfeitures how to be disposed of.

And whereas the aforerecited act for levying soldiers will determine and expire at the end of the session of the general assembly to be held and kept upon the last Wednesday in May next, anno one thousand seven hundred and three, unless it be revived,

SECT. 3. Be it enacted by the authority aforesaid, that the said act, entitled an act for levying soldiers, and all and singular the paragraphs, articles, matters and things therein contained, be and hereby are further revived and continued to abide and remain of full force and effect unto the end of the present war with France and Spain, and not afterwards. [October, 1702.]

Act for levying soldiers further continued.

CHAPTER XIV.

AN ACT FOR ASCERTAINING THE NUMBER, AND REGULATING THE HOUSE OF REPRESENTATIVES.

WHEREAS their majesties have been graciously pleased by their royal charter to grant power unto the great and general court or assembly of their province of the Massachusetts bay, from time to time, to direct, appoint, and declare what number of representatives each county, town or place shall elect and depute, to serve for and represent them respectively in the said assembly,

Towns consisting of one hundred and twenty families or upwards, may send two representatives, Boston, four.

SECT. 1. Be it therefore enacted and ordained by his excellency the governor, council and representatives, now in general court assembled, and by the authority of the same, that henceforth every town within this province consisting of the number of forty freeholders, and other inhabitants qualified by charter to elect, shall and hereby are enjoined to choose and send one freeholder as their representative; and every town consisting of the number of one hundred and twenty freeholders and other inhabitants, qualified as aforesaid, or upwards, may send two such representatives; and each town of the number of thirty freeholders and other inhabitants, qualified as aforesaid, or upwards, under forty, are at liberty to send one or not; but may choose and send one representative, if they think fit, to serve for and represent them respectively in every session of the great and general court or assembly from time to time; and all towns under thirty freeholders may send one to represent them, or join with the next town in the choice of their representatives, they paying a proportionable part of the charge. And no town shall at any time send more than two representatives, except Boston, who are hereby granted to choose and send four.

Writs for calling a general assembly, to issue thirty days before.

SECT. 2. And be it further enacted by the authority aforesaid, that when and so often as his excellency the governor shall see cause to convene and hold a great and general court or assembly, writs shall issue out from the secretary's office under the seal of the province, and signed by the governor, thirty days at least before the time appointed for such assembly's meeting, directed unto the sheriffs of the several counties. And where there is no sheriff in any county or place, there to be directed to the marshal, commanding each of them respectively to send his precepts to the selectmen of the several and respective towns within such county, to assemble and call together the

freeholders and other inhabitants qualified as aforesaid, to choose and elect one or more freeholders, as the number in each town is more or less, as above, to serve for and represent them in such great and general court or assembly; the major part of the selectmen in each town respectively to be present at such meeting, and to give directions for the regular and orderly carrying on of the same, who are to return the said precept, with the names of such as shall be chosen by the major part of the electors present at such meeting, under their hands unto the respective sheriffs or marshals, by them to be returned into the secretary's office one day at the least before the time prefixed for the said court or assembly's sitting.

Selectmen to regulate the meeting.

SECT. 3. And it is further enacted by the authority aforesaid, that the representatives assembled in any great and general court shall be the sole judges of the elections and qualifications of their own members, and may from time to time settle, order and purge their house, and make such necessary orders for the due regulation thereof, as they shall see occasion. And forty representatives at any time so assembled shall be accounted a number sufficient to constitute a house, pass bills, and to transact and do any business proper to be done in that house; and such acts to be esteemed valid and of effect.

House of representatives judges of elections, &c.

Forty representatives constitute a house.

SECT. 4. And be it further enacted by the authority aforesaid, that each town respectively shall pay unto their several representatives, during their attendance on the court, and for the necessary time expended in their journeying to and from thence, three shillings in money per diem, within one month next after the end of each session commencing from his excellency's arrival.

Representatives' allowance enlarged.

SECT. 5. And it is further enacted by the authority aforesaid, that every person chosen to serve for, and represent any town in the general assembly, and accepting thereof, shall give his constant attendance during their sessions, on pain of forfeiting the sum of five shillings per diem for his neglect, without just excuse made and allowed of by the house of representatives, to be paid unto the clerk of the said house, and is to be disposed of and employed as the house shall direct, and in default of payment to be levied by distress upon such delinquent's goods, by warrant from the said clerk, by order of the house, directed to the sheriff of the county, his under-sheriff or deputy, or constable of the town where such representative dwells; and no representative shall depart or absent himself from the general assembly, until the same be fully finished, adjourned or prorogued, without the license of the speaker and representatives assembled, to be entered upon record in the clerk's book, on pain to every one so departing or absenting himself in any other manner to lose his wages. And the inhabitants of

Penalty for non-attendance.

Not to depart without leave of the speaker and the house.

such town for which he serves shall be clearly discharged of the said wages against such person and his executors for ever.

No representative or his servant to be arrested, &c. during the session.

SECT. 6. And it is further enacted by the authority aforesaid, that no member of the general assembly, or his servant, during the time of their sessions, or going to and from thence shall be arrested, sued, imprisoned, or any ways molested or troubled, or compelled to make answer to any suit, bill, plaint or declaration, or otherwise, cases of high treason and felony excepted. [October, 1692.]

CHAPTER XV.

AN ACT FOR ASCERTAINING THE VALUE OF COINS CURRENT WITHIN THIS PROVINCE.

WHEREAS for many years past the money coined in the late Massachusetts colony hath passed current at the rate or value it was stamped for, and good Sevil, Pillar or Mexico pieces of eight, of full seventeen penny weight, have also passed current at six shillings per piece, and half pieces of proportionable weight pro rata, quarter pieces of the same coin at sixteen pence per piece, and reals of the same coin at eight pence per piece,

Be it therefore enacted and declared by the lieutenant governor, council and representatives, convened in general assembly, and by the authority of the same, that all and every the coins before mentioned shall still be and continue current money within this province, and shall be accepted, taken and received, at the respective values aforesaid, according as hath heretofore been accustomed.

Provided always, that such of the said coins as pass by tale be not diminished by washing, clipping, rounding, filing, or scaling. [October, 1697.]

CHAPTER XVI.

AN ACT AGAINST THE DIMINISHING AND COUNTERFEITING OF MONEY.

Counterfeiting or diminishing of her majesty's coins.

SECT. 1. BE it enacted and declared by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that every person duly convicted of counterfeiting or impairing, diminishing or debasing any of her majesty's coins, by washing, clipping, rounding, filing or scaling of the same, shall be proceeded against as a felon, and suffer the pains of death.

Counterfeiting or diminishing of the current money of the province.

And that every person duly convicted of counterfeiting or impairing, diminishing or debasing any of the money established to be current money within this province, according to the act for ascertaining the value of coins current within this province, by washing, clipping, rounding, filing or scaling of the same, shall be set in the pillory by the space of one whole hour, and have one of his ears nailed thereto, and also be publickly whipped upon the naked body with so many stripes as the court, before whom the conviction shall be, shall order, not exceeding forty, and pay all charges of prosecution.

Clippings, filings, &c.

SECT. 2. Be it further enacted by the authority aforesaid, that every person duly convicted of buying or receiving any clippings, scalings or filings of money, shall forfeit and pay a fine of twenty pounds, one moiety thereof unto her majesty, for and towards the support of the government within this province, and the other moiety to him or them that shall inform and sue for the same, and also be imprisoned by the space of three months. [March, 1703.]

CHAPTER XVII.

AN ACT RELATING TO MULATTO AND NEGRO SLAVES.

WHEREAS great charge and inconveniences have arisen to divers towns and places by the releasing and setting at liberty mulatto and negro slaves, for prevention whereof for the future,

Security to be given for mulattoes or negroes set free.

Be it declared and enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that no mulatto or negro slave shall hereafter be manumitted, discharged or set free, until sufficient security be given to the treasurer of the town or place where such person dwells, in a valuable sum, not less than fifty pounds, to secure and indemnify the town or place from all charge for or about such mulatto or negro, to be manumitted and set at liberty, in case he or she by sickness, lameness or otherwise, be rendered uncapable to support him or herself.

None to be accounted free, for whom security is not given.

And no mulatto or negro hereafter manumitted shall be deemed or accounted free, for whom security shall not be given as aforesaid, but shall be the proper charge of their respective masters or mistresses, in case they stand in need of relief and support, notwithstanding any manumission or instrument of freedom to them made or given; and shall also be liable at all times to be put forth to service by the selectmen of the town. [June, 1703.]

CHAPTER XVIII.

AN ACT TO PREVENT DISORDERS IN THE NIGHT.

WHEREAS great disorders, insolences and burglaries are oft times raised and committed in the night time by Indians, negro and mulatto servants and slaves, to the disquiet and hurt of her majesty's good subjects, for prevention thereof,

Indian, negro and mulatto servants, not to be abroad after nine at night.

Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that no Indian, negro or mulatto servant or slave, may presume to be absent from the families whereto they respectively belong, or be found abroad in the night time after nine o'clock, unless it be upon some errand for their respective masters or owners.

If found abroad or misbehave themselves, to be apprehended and sent to the house of correction.

And all justices of the peace, constables, tithingmen, watchmen, and other her majesty's good subjects, being householders within the same town, are hereby respectively empowered to take up and apprehend, or cause to be apprehended any Indian, negro or mulatto servant or slave that shall be found abroad after nine o'clock at night, and shall not give a good and satisfactory account of their business, make any disturbance, or otherwise misbehave themselves, and forthwith convey them before the next justice of the

peace, if it be not over late in the night, or to restrain them in the common prison, watch house, or constable's house, until the morning; and then cause them to appear before a justice of the peace, who shall order them to the house of correction to receive the discipline of the house, and then be dismissed; unless they be charged with any other offence, than absence from the families whereto they respectively belong, without leave from their respective masters or owners; and in such towns where there is no house of correction, to be openly whipped by the constable, not exceeding ten stripes. [October, 1703.]

CHAPTER XIX.

AN ACT FOR THE BETTER PREVENTING OF A SPURIOUS AND MIXED ISSUE, &c.

Penalty for a negro or mulatto man, committing fornication with a christian woman.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that if any negro or mulatto man shall commit fornication with an English woman, or a woman of any other christian nation within this province, both the offenders shall be severely whipped at the discretion of the justices of assize, or court of general sessions of the peace within the county where the offence shall be committed; and the man shall be ordered to be sold out of the province, and be accordingly sent away within the space of six months next after such order made, and be continued in prison at his master's charge, until he be sent away; and the woman shall be enjoined to maintain the child, if any there be, at her own charge; and if she be unable so to do, she shall be disposed of in service to some of her majesty's subjects within the province, for such term as the justices of the said court shall order, for the maintenance of the child.

Penalty for a christian man, committing fornication with a negro or mulatto.

And if any Englishman, or man of other christian nation within this province, shall commit fornication with a negro or mulatto woman, the man so offending shall be severely whipped, at the discretion of the justices of the court of assize, or court of general sessions of the peace, before whom the conviction shall be, and shall also pay a fine of five pounds to her majesty for and towards the support of the government, and be enjoined to maintain the child, if

any there be; and the woman shall be sold, and sent out of the province, as aforesaid.

Penalty for a negro or mulatto striking a christian.

And if any negro or mulatto shall presume to smite or strike any person of the English, or other christian nation, such negro or mulatto shall be severely whipped, at the discretion of the justices before whom the offender shall be convicted.

No christian to marry with a negro or mulatto.

Penalty for joining any such in marriage.

Sect. 2. And be it further declared and enacted by the authority aforesaid, that none of her majesty's English or Scottish subjects, nor of any other christian nation within this province, shall contract matrimony with any negro or mulatto; nor shall any person, duly authorised to solemnize marriages, presume to join any such in marriage, on pain of forfeiting the sum of fifty pounds; one moiety thereof to her majesty, for and towards the support of the government within this province, and the other moiety to him or them that shall inform and sue for the same, in any of her majesty's courts of record within the province, by bill, plaint or information.

And no master shall unreasonably deny marriage to his negro with one of the same nation; any law, usage or custom to the contrary notwithstanding.

All negroes imported to be entered and duty paid.

Sect. 3. And be it further enacted by the authority aforesaid, that from and after the first day of May, in the year one thousand seven hundred and six, every master of ship or vessel, merchant or other person, importing or bringing into this province any negro or negroes, male or female, of what age soever, shall enter their number, names and sex in the impost office; and the master shall insert the same in the manifest of his lading, and shall pay to the commissioner and receiver of the impost four pounds per head for every such negro, male or female; and as well the master, as the ship or vessel wherein they are brought, shall be security for payment of the said duty; and both or either of them shall stand charged in the law therefor to the commissioner, who may deny to grant a clearing for such ship or vessel, until payment be made, or may recover the same of the master, at the commissioner's election, by action of debt, bill, plaint or information in any of her majesty's courts of record within this province.

Master and ship both security for the duty.

Penalty for not entering of negroes.

And if any master of ship or vessel, merchant or other shall refuse or neglect to make entry as aforesaid of all negroes imported in such ship or vessel, or be convicted of not entering the full number, such master, merchant or other persons, shall forfeit and pay the sum of eight pounds for every one that he shall refuse or neglect to make entry of, one moiety thereof to her majesty for and towards the support of the government of this province, and the other moiety to him or them that shall inform of the same, to be recovered by the commissioner in manner as aforesaid.

And if any negro imported as aforesaid, for whom the duty is paid, shall be again exported within the space of twelve months, and be bona fide sold in any other plantation, upon due certificate thereof produced, under the hand and seal of the collector or naval officer in such other plantation, the importer here shall be allowed to draw back the whole duty of four pounds by him paid, and order shall be given accordingly. And the like advantage of the drawback shall be allowed to the purchaser of any negro sold within this province, in case such negro happen to die within the space of six weeks next after importation, or bringing into this province. [October, 1705.]

Drawback upon exportation, &c.

CHAPTER XX.

AN ACT PROHIBITING THE IMPORTATION OR BRINGING INTO THIS PROVINCE ANY INDIAN SERVANTS OR SLAVES.

Whereas divers conspiracies, outrages, barbarities, murders, burglaries, thefts, and other notorious crimes and enormities at sundry times, and especially of late, have been perpetrated and committed by Indians and other slaves, within several of her majesty's plantations in America, being of a malicious, surly and revengeful spirit, rude and insolent in their behaviour, and very ungovernable, the over great number and increase whereof within this province is likely to prove of pernicious and fatal consequence to her majesty's subjects and interest here, unless speedily remedied, and is a discouragement to the importation of white Christian servants, this province being differently circumstanced from the plantations in the islands, and having great numbers of the Indian natives of the country within and about them, and at this time under the sorrowful effects of their rebellion and hostilities,

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, all Indians, male or female, of what age soever, imported or brought into this province, by sea or land, from any part or place whatsoever, to be disposed of, sold, or left within the province, shall be forfeited to her majesty for and towards the support of the government, unless the person or persons importing or bringing in such Indian or Indians shall give security at the secretary's office

Indians brought in, to be forfeited, unless security be given to carry them out again within one month.

of fifty pounds per head, to transport and carry out the same again within the space of one month next after their coming in, not to be returned back to this province.

Indians brought in to be entered in the secretary's office, &c.

And every master of ship or other vessel, merchant or person whatsoever, importing or bringing into this province, by sea or land, any Indian or Indians, male or female, within the space of twenty-four hours next after their arrival or coming in, shall report and enter their names, number and sex, and give security in the secretary's office as aforesaid, on pain of forfeiting to her majesty for the support of the government the sum of fifty pounds per head, to be sued for and recovered in any of her majesty's courts of record, by action, bill, complaint or information.

Fee for entry and bond.

And the fee to be paid for such entry and bond as aforesaid shall be two shillings and six pence, and no more. [August, 1712.]

CHAPTER XXI.

AN ACT FOR THE PREVENTING OF PERSONS UNDER AGE, APPRENTICES OR SERVANTS, BEING TRANSPORTED OUT OF THE PROVINCE WITHOUT THE CONSENT OF THEIR MASTERS, PARENTS OR GUARDIANS.

WHEREAS it has been complained of that persons under age, apprentices and servants, within this province do oftentimes get on board the outward bound vessels, and are there entertained by the masters or mariners, and actually transported to some parts beyond the seas, not only to the great loss and injury of their respective masters, &c. but also to the damage of the province,

Masters of ships not to carry off any servants or sons under age.

Be it therefore enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that every master of any outward bound ship or vessel that shall hereafter carry or transport out of this province any person under age, or bought or hired servant or apprentice, to any parts beyond the seas, without the consent of such master, parent or guardian signified in writing, shall forfeit the sum of

Penalty 50l.

fifty pounds, the one half to and for the use of the province, the other half to and for the use of him that shall inform or sue for the same, and be further liable to an action in the law, at the suit of the parent, master or owner of such transported person, for any damages sustained by him or them. [October, 1718.]

CHAPTER XXII.

AN ACT FOR THE SUPPRESSING OF LOTTERIES.

WHEREAS there have been lately set up within this province certain mischievous and unlawful games called lotteries, whereby the children and servants of several gentlemen, merchants and traders, and other unwary people, have been drawn into a vain and foolish expense of money, which tends to the utter ruin and impoverishment of many families, and is to the reproach of this government and against the common good, trade, welfare and peace of the province, for remedy whereof,

SECT. 1. Be it enacted, adjudged and declared, and it is hereby enacted, adjudged and declared by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that all such lotteries, and all other lotteries, are common and publick nuisances.

Lotteries a publick nuisance.

SECT. 2. And it is further enacted by the authority aforesaid, that from and after the publication of this act, no person or persons whatsoever shall publickly or privately exercise, keep open, show or expose to be played at, drawn at, or thrown at, or shall draw, play or throw at, any such lottery, or any other lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever; and every person or persons that shall after the publication of this act as aforesaid, exercise, expose, open or show to be played, thrown or drawn at any such lottery, play or device, or other lottery, shall forfeit for every such offence the sum of two hundred pounds, to be recovered by information, bill, plaint or action at law, in any of his majesty's courts of record within this province, wherein no essoin, protection or wager of law shall be allowed, one half thereof to be to the king's majesty, to be applied towards the support of this government, and the other half to him or them that shall inform and sue for the same.

200l. forfeiture for setting up lotteries.

SECT. 3. And be it further enacted, that every person or persons, that after the publication of this act as aforesaid shall play, throw, or draw at any such lottery, play or device, or other lotteries, shall forfeit for every such offence the sum of ten pounds, to be recovered by information, bill, plaint or action at law, in any of his majesty's courts of record within this province, wherein no essoin, protection or wager of law shall be allowed, one half part thereof to be to the king's majesty to be applied towards the support of this

10l. forfeiture for drawing at lotteries.

government, and the other half to him or them that shall inform and sue for the same.

Officers to prevent lotteries.

SECT. 4. And be it further enacted by the authority aforesaid, that for the more effectual suppressing and preventing such unlawful lotteries, the justices of the peace, sheriffs, under-sheriffs, sheriffs' deputies and constables, within their respective jurisdictions, be empowered and required to use their utmost endeavours to prevent the drawing of any such unlawful lottery heretofore or hereafter to be set up, by all lawful means whatsoever. [November, 1719.]

CHAPTER XXIII.

AN ACT TO REGULATE THE PRICE AND ASSIZE OF BREAD.

WHEREAS the act made and passed in the eighth year of king William the third, entitled an act for the due assize of bread, is found not effectual for the good ends and purposes therein designed, and little or no observance has been made thereof, but covetous and evil disposed persons have for their own gain deceived and oppressed his majesty's subjects, more especially the poorer sort, for remedy whereof,

Act for the due assize of bread.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that the said act, entitled an act for the due assize of bread, shall be and is hereby repealed, annulled and made void, and that after the tenth day of September next the selectmen of each town within this province, where bread is baked for sale, shall once every month, and oftener if they see cause, set, ascertain and appoint within their several towns the assize and weight of all sorts of bread to be sold or exposed to sale by any baker or other person whatsoever, having respect to the price the grain, meal or flour whereof such bread shall be made, shall bear in or about the town or place where such assize shall be set, and making reasonable allowance to the bakers for their charges, pains and livelihood, and shall make known their said regulation of the assize of bread in some open and publick place or places in their respective towns.

Assize of bread to be ascertained.

And that the said assize may be the more easily ascertained,

Sorts of bread to be allowed.

SECT 2. Be it enacted by the authority aforesaid, that from and after the said tenth day of September, no person or persons whatsoever shall make for sale, or sell, or ex-

pose to sale any sort or sorts of bread, but such as are hereinafter mentioned, that is to say, white, wheaten and household, and such other sort or sorts as shall be publickly licensed and allowed by the said selectmen in the several and respective towns, all which several sorts of bread shall be made in their several and respective degrees, according to the goodness of the grain whereof the same are or ought to be made, and the assize and weight of the said white, wheaten and household bread shall be set and ascertained according to the table hereafter mentioned, viz.

A TABLE

Of the assize of bread in pounds, ounces and drams. In the first and last columns is the price of the bushel of wheat, from 4s. to 15s. The allowance to the baker for baking to be made by the selectmen being included; so that, for example, if the price of wheat be 5s. the bushel, and the selectmen allow 1s. 6d. per bushel for baking, the price in the table will be 6s. 6d. and even with or against those numbers in the first and last columns will be found the weight of the several loaves avoirdupois.

Note, that the white loaves are one half and the wheaten three quarters of the weight of household loaves.

The Price of the Bushel of Wheat and Baking.	Weight of the Penny Loaf.						Weight of the Two Penny Loaf.						Weight of the Six Penny Loaf.						Weight of the 12 Penny Loaf.						The Price of the Bushel of Wheat and Baking.
	White.		*Wheaten.*		*Household.*		*White.*		*Wheaten.*		*Household.*		*Wheaten.*		*Household.*				*Wheaten.*		*Household.*				
	Ounces	Drams.	Ounces.	Drams	Ounces.	Drams.	Ounces.	Drams	Ounces.	Drams.	Ounces.	Drams.	Pounds.	Ounces. Drams.	Pounds.	Ounces.	Drams.		Pounds.	Ounces. Drams.	Pounds.	Ounces.	Drams.		
s. d.																								s. d.
4 0	11	9	17	6	23	3	23	3	34	12	46	5	0	8 4	3	11			13	9	17	6	1		4 0
4 6	10	5	15	7	20	10	20	10	30	14	41	3	5	12 11	7	11	9		11	9	15	7	3		4 6
5 0	9	4	13	14	18	9	18	9	27	13	37	1	5	3 7	6	15	4		10	6	13	13	14	7	5 0
5 6	8	7	12	10	16	14	16	14	25	4	33	11	4	11 13	6	5	2		9	7	11	12	10	4	5 6
6 0	7	10	11	9	15	7	15	7	23	3	30	14	4	5 8	5	12	11		8	11	1	11	9	6	6 0
6 6	7	2	10	11	14	4	14	4	21	6	28	8	4		5	5	9		8		5	10	11	2	6 6
7 0	6	10	9	15	13	4	13	4	19	14	26	8	3	11 9	4	15	7		7	7	3	9	14	14	7 0
7 6	6	3	9	4	12	6	12	6	18	9	24	11	3	7 10	4	10	2		6	15	4	9	4	5	7 6
8 0	5	13	8	11	11	9	11	9	17	6	23	3	3	4 2	4	5	8		6	8	4	8	11	1	8 0
8 6	5	7	8	3	10	14	10	14	16	6	21	13	3	1 1	4	1	7		6	5	2	8	2	4	8 6
9 0	5	2	7	12	10	5	0	5	15	7	20	10	2	14 5	3	13	15		5	12	11	7	11	9	9 0
9 6	4	14	7	5	9	12	9	12	14	10	19	8	2	11 14	3	10	9		5	7	13	7	5	1	9 6
10 0	4	10	6	15	9	4	9	4	13	14	18	9	2	9 11	3	7	10		5	3	7	6	15	4	10 0
10 6	4	7	6	10	8	13	8	13	13	4	17	10	2	7 12	3	4	15		4	15	7	6	9	15	10 6
11 0	4	3	6	5	8	7	8	7	12	10	16	14	2	5 15	3	2	9		4	11	13	6	5	2	11 0
11 6	4		6	1	8	1	8	1	12	1	16	2	2	4 4	3		6		4	8	9	6		11	11 6
12 0	3	14	5	13	7	12	7	12	11	9	15	7	2	2 12	2	14	5		4	5	8	5	11	12	12 0
12 6	3	11	5	9	7	7	7	7	11	2	14	13	2	1 6	2	12	8		4	2	12	5	9		12 6
13 0	3	9	5	6	7	2	7	2	10	11	14	4	2	1 2	10	12			4		3	5	5	9	13 0
13 6	3	7	5	2	6	14	6	14	10	5	13	12	1	14 14	2	9	3		3	13	13	5	2	6	13 6
14 0	3	5	4	15	6	10	6	10	9	15	13	4	1	13 13	2	7	12		3	11	9	4	15	7	14 0
14 6	3	3	4	13	6	6	6	6	9	9	12	13	1	12 12	2	6	6		3	9	8	4	12	11	14 6
15 0	3	1	4	10	6	3	6	3	9	4	12	6	1	11 13	2	5	1		3	7	10	4	10	2	15 0

And to the intent that the good design of this act may be effectually complied with,

Bread to be marked.

SECT. 3. Be it further enacted, that every common baker, and any person that shall bake or make for sale, or expose to sale any sort of loaf bread or biscuit, that shall be sold by tale, shall, from and after the said tenth day of September, fairly mark, or imprint, or cause to be marked or imprinted such distinct mark as shall be appointed or allowed by the selectmen, so that their bread may be known and distinguished.

Penalty for breach of this act.

SECT. 4. And be it further enacted by the authority aforesaid, that if any baker or bakers, or other person or persons baking or making bread for sale, or exposing bread to sale, shall not observe the assize to be ascertained by virtue of this act, or shall bake or make for sale, or sell or expose to sale any bread wanting the due weight, or that shall not be marked according to the direction of this act, or shall break such regulations and orders as shall from time to time be made by virtue of this act, he or they so doing, and being thereof convicted by confession of the party, or by the oath of two or more credible witnesses before one or more of his majesty's justices of the peace for the county where the said offence is committed, or the party offending apprehended, shall for every such offence forfeit the sum of twenty shillings, to be levied by way of distress upon the goods and chattels of every such offender, by warrant from the said justice or justices, the said forfeitures to be the one half towards the support of the poor of the town where such offence shall be committed, and the other half to the informer; and if any baker or seller of bread shall put into any bread by him sold or exposed to sale, any mixture of any other grain than what shall be appointed by the assize settled in the place where such bread shall be so sold or exposed to sale, every person so offending shall, for every such offence forfeit the sum of twenty shillings, to be recovered in the manner and form herein beforementioned, and to be for the uses aforementioned.

Proviso.

Provided always, that no person shall be convicted in manner aforesaid for any of the aforementioned offences, unless the prosecution in order to such conviction be commenced within five days next after the offence committed.

Proviso for appeal.

SECT. 5. Provided also, and be it further enacted, that if any person so convicted shall think him or herself aggrieved, he or they shall and may make his or her appeal to the next quarter sessions of the peace for the county where such conviction shall be made, at which sessions the same shall be heard and finally determined; and if the said person so appealing shall not make good such his or her appeal, or prosecute it with effect, the said court of sessions shall award such cost as they shall think reasonable to the prosecutor or informer,

and commit the offender to the common gaol until he or she shall make payment of the said costs, and also of the penalty adjudged on the conviction; but in case the appellant shall make good his or her appeal, and be discharged of his or her said conviction, the like reasonable costs shall be awarded for the appellant against such informer or prosecutor; and if any justice of the peace shall, on any information made to him of any offences committed against this act, wilfully and wittingly omit the performance of his duty thereupon in the execution of this act, he shall forfeit the sum of forty shillings, to be recovered by action, bill, plaint or information in any of his majesty's courts of record in the county where he doth reside, wherein no essoin, protection or wager of law shall be allowed.

Penalty for justices' neglect of duty.

And that the good design of this act may be the more effectually accomplished,

Officers to try and weigh bread.

SECT. 6. Be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any of his majesty's justices of the peace, or any one of them, within their respective counties, and any of the selectmen, or any one of them, in their respective towns, or any two of the clerks of the market, at all times hereafter in the day time, to enter into any house, stall, bake-house, out-house or ware-house, belonging to any baker or seller of bread, there to search for, view, weigh or try all or any the bread of such person, or which shall there be found; and if any bread shall there be found wanting either in the goodness of the stuff whereof the same shall be made, or in the due working or baking thereof, or shall be deficient in the due weight, or shall not be truly marked according to the directions of this act, or shall be of any other sort than shall be allowed by virtue of this act, that then and in every such case it shall and may be lawful to and for such justice or justices of the peace, or selectmen or selectman, or any two clerks of the market, to seize and take the said bread so found, and cause the same to be given and distributed to the poor of the town where such seizure shall be made; and if any baker or seller of bread, or other person or persons, shall not permit or suffer such search or seizure to be made by virtue of this act, or shall oppose, hinder or resist the same, he or they so doing shall, for every such offence, forfeit the sum of three pounds, to be disposed of as the other fines, and to be had and recovered in the summary manner and form herein before first mentioned.

Forfeiture of bread to the poor.

Provided always, that a proper allowance be made for the drying of biscuit, yet never to exceed two ounces for drying at the lowest price of wheat, and so proportionably. [July, 1720.]

CHAPTER XXIV.

AN ACT IN ADDITION TO AN ACT, ENTITLED AN ACT FOR THE SUPPRESSING OF LOTTERIES.

WHEREAS the provision made in and by an act, entitled an act for the suppressing of lotteries, made and passed in the sixth year of the reign of his late majesty king George the first, has not been found sufficient to put a stop to that practice, but sundry persons have exposed their estates as well real as personal to sale by lotteries, projected and the tickets disposed of within this province, reserving the drawing of the lots in some of the neighbouring colonies or provinces, whereby the good and wholesome design and true intent and meaning of the aforesaid act is very much eluded and evaded, to the great discouragement of trade and industry, and grievous hurt and damage of many unwary people, for remedy whereof,

Fine for setting up a lottery.

SECT. 1. Be it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the publication of this act, if any person or persons shall undertake or set up any lottery, or expose to sale, or dispose of any estate real or personal, by way of lottery, such person or persons shall for such offence forfeit and pay the sum of five hundred pounds, to be recovered by information, plaint, bill or action at law in any of his majesty's courts of record within this province, the one half thereof to be to the king's majesty, to be applied towards the support of this government, the other half to him or them that shall inform and sue for the same.

For publishing any account of lotteries.

SECT. 2. And be it further enacted by the authority aforesaid, that if any person or persons shall be aiding or assisting in any lottery, by printing, writing, or any otherways publishing an account thereof, or where tickets may be had for the same, such person or persons shall forfeit the sum of one hundred pounds, to be recovered and disposed of in manner as aforesaid.

For selling lottery tickets.

SECT. 3. And be it further enacted by the authority aforesaid, that if any person or persons shall offer or expose to sale, give, sell, or otherways dispose of to any person within this province any lottery tickets for the sale of any estate whatsoever, real or personal, such person or persons shall forfeit the sum of two hundred pounds for each ticket so exposed to sale or otherwise disposed of, to be recovered in manner as aforesaid, and for the use aforesaid, and the

person so offending shall be uncapable of sustaining any office or place of profit whatsoever within this province.

Provided always, that this act shall not be construed to extend to any lottery allowed by act of parliament or law of this province. [April, 1733.] Proviso.

CHAPTER XXV.

AN ACT TO ASCERTAIN THE VALUE OF MONEY, AND OF THE BILLS OF PUBLICK CREDIT OF THIS PROVINCE, GRANTED THIS PRESENT YEAR FOR THE SUPPLY OF THE TREASURY, AND FOR SECURING THE CREDIT OF SAID BILLS.

SECT. 1. BE it enacted by his excellency the governor, council and representatives, in general court assembled, and by the authority of the same, that from and after the first day of February next, all coined silver of sterling alloy shall be accounted, paid, and taken as lawful money of this province, at the rate of six shillings and eight pence per ounce troy weight, and other money in the same proportion, and no otherwise, and all private trade and dealings, where no other lawful money or thing is expressly contracted for, shall be intended to be in and for the money aforesaid. The value of silver money stated at 6s. 8d. per ounce.

And whereas the bills of publick credit on this province have been fluctuating and uncertain in their value, whereby many mischiefs and inconveniences have arisen, for preventing whereof for the future,

SECT. 2. Be it enacted by the authority aforesaid, that the province bills emitted for the supply of the treasury this present year shall be valued and taken at the rate following, viz. every bill of six shillings and eight pence, at the rate of one ounce troy weight of coined silver sterling alloy, and all other bills of said emission at the same proportion. Value of bills of credit stated.

SECT. 3. And be it further enacted, that six shillings and eight pence of all debts and dues to be contracted within five years from the last day of March next, specialties and express contracts excepted, shall be deemed and to all intents and purposes adjudged to be equal to one ounce of coined silver sterling alloy, and shall be accordingly paid with one ounce of silver, or with six shillings and eight pence of the bills to be emitted for the supply of the treasury this present year, excepting as hereinafter excepted, or in so much

of the province bills thereafter to be emitted, as shall be equal to one ounce of silver at the time of payment, and so in proportion for a greater or less sum.

Allowance to be made to the creditor in case the bills be depreciated.

Provided nevertheless, that if the bills ordered to be emitted this present year, or other bills hereafter to be emitted, shall be depreciated, or commonly pass at any lower rate than they are set at by this act, or by the act by which such other bills shall be emitted, that then and in such case the justices of the respective courts shall give judgment for so much in silver as the true debt appears to be, and in want thereof for so much in said province bills, with the addition of so much more as will make amends for the depreciating said bills from their present stated value, or the value at which such other bills shall be stated.

And to the intent that there may be one certain rule by which the justices of the respective courts shall proceed in making up their judgments,

Rule for the court's proceeding thereon.

SECT. 4. Be it enacted by the authority aforesaid, that the general assembly shall once in every six months determine the rates that said bills then commonly pass at in proportion to silver and bills of exchange payable in London, and in want thereof it shall be determined by the eldest counsellor for the time being, in each of those counties where any member of his majesty's council is an inhabitant, who are hereby appointed a committee for that purpose, and to ascertain the said proportion by a certificate under their hands, or the hands of the major part of them, which certificate shall be lodged in the secretary's office, and in case of their failure, that then the justices of the superiour court of judicature in their several terms in the county of Suffolk annually shall appoint five able and sufficient men upon their oaths, to consider and report the true value of those bills as they will produce in silver or bills of exchange to the best of their judgment, and certify the same into the secretary's office, and the secretary on receipt of either of the aforesaid certificates shall forthwith send attested copies thereof to the clerks of the courts in the several counties, to be by them laid before their respective courts for their direction.

And whereas the purchasing silver at high rates, has often brought a discount on the bills of publick credit,

Penalty for giving more for silver than at the rate set in this act.

SECT. 5. Be it therefore further enacted by the authority aforesaid, that whosoever shall at any time within five years from the first day of February next, directly or indirectly by himself or by any other for him, wittingly give, contract or offer to give, receive, contract, or offer to receive more than six shillings and eight pence in the bills of publick credit, ordered to be emitted this present year for the supply of the treasury, for one ounce of silver, troy weight of sterling alloy, or proportionably for any greater or less sum, or

more in any other bills of credit than (at the rates at which they shall obtain a currency) shall be equal to six shillings and eight pence in the bills ordered to be emitted this present year, for one ounce of silver, and proportionably for a greater or less sum, or more than a proportionable value, whether payment be made or proposed to be made in bills or any other way and manner whatsoever, he shall forfeit the sum of fifty pounds, in the bills ordered to be emitted this year for the supply of the treasury, or equivalent thereto in other province bills, or in silver or gold; one half to his majesty for the use of the province, and the other half to the informer, to be recovered by action of debt, bill, plaint or information in any court of record within the county where the offence shall be committed, or by indictment or presentment of the grand jury; and in every such prosecution, if the prosecutor only, or other credible person, who was party in such contract, trade or dealing, shall tender his oath to the truth of the matter alleged, unless the defendant will thereof acquit himself by his oath, the prosecutor or such other credible person as aforesaid, shall be admitted to swear to the matter of fact charged upon the defendant, and that shall be taken for full evidence against the defendant, and the prosecutor or such other person who shall so testify, shall not be liable to any fine or forfeiture he may have incurred by and in the same contract, trade or dealing; and if any person, thought probably concerned in any such contract, trade or dealing, refuse to be sworn or to give evidence either before the court before whom the trial shall be, or to the grand jury, he shall, by the court who shall require such oath, be fined such sum as if he had been convict of buying silver contrary to this act, and shall stand committed till he pay the same, and the fine shall be in like manner applied.

Provided, that nothing herein contained shall be construed to restrain the buying or selling of silver wrought into vessels or other things commonly made by goldsmiths, at a higher rate than six shillings and eight pence per ounce. [September, 1741.] Proviso.

CHAPTER XXVI.

AN ACT, IN ADDITION TO AND IN EXPLANATION OF SUNDRY CLAUSES OF AN ACT, ENTITLED AN ACT TO ASCERTAIN THE VALUE OF MONEY AND OF THE BILLS OF PUBLICK CREDIT OF THIS PROVINCE, &C. MADE AND PASSED IN THE FIFTEENTH YEAR OF HIS MAJESTY'S REIGN.

WHEREAS in the law for ascertaining the value of money and of the bills of publick credit of this province, passed in the fifteenth year of his majesty's reign, it is enacted, that all debts contracted after the last day of March, A. D. 1742, (specialties and express contracts excepted) should be deemed equal to lawful money, and every debt of six shillings and eight pence value so contracted should or might be discharged by one ounce of silver, or six shillings and eight pence of the bills of publick credit emitted that year, or that should thereafter be emitted, equal in value to an ounce of silver, provided nevertheless, that in case such bills should be depreciated below the value they were stated at by said act, that an addition should be made of so much more as would make them equal to the then fixed value aforesaid, and the judges of the superiour court, agreeable to the directions of the aforesaid law, have made inquiry by a committee for that purpose appointed, who have certified into the secretary's office, that seven shillings and two pence of the bills of credit of the last form and tenor is equal to one ounce of silver, in consequence whereof judgments have been made up in several courts on debts contracted since the last day of March aforesaid at that rate, whereby an addition of six pence is made to the creditor on every debt of six shillings and eight pence value, and whereas by said certificate compared with the rates of bills of exchange in March aforesaid, it is manifest that the said bills are not depreciated below the value they passed at when first emitted, in as much as six shillings and eight pence in said bills will now go as far in purchasing bills of exchange as when said act was made, and the aforesaid loss has happened to the debtor from his not strictly attending the direction of said law, whereby every debt of six shillings and eight pence is deemed equal to an ounce of silver, specialties and express contracts excepted, and should have been considered by the debtor at the time of contracting such debt as if the same had been payable in lawful money, and whereas the bills of publick credit current in this province are at present the only medium of the common trade and business within it, there will be con-

tinual danger of the debtor's computing his debt according to the depreciated value of such bills, whilst it is deemed by said law to be contracted for lawful money, and thereby great damage may ensue to debtors contrary to the true intent and meaning of the said law, wherefore,

Be it enacted by the governor, council and house of representatives, that all debts contracted since the last of March, A. D. one thousand seven hundred and forty-two, or that shall hereafter be contracted, specialties and express contracts excepted, shall be deemed and adjudged equal to the real value only such bills have passed or shall pass at when such debt was or shall be contracted; and every debt of twenty shillings contracted as aforesaid shall or may be always hereafter discharged by twenty shillings in said bills, and so pro rata for a greater or less sum, unless such bills have already or should hereafter be depreciated below the value they passed at when such debt was or shall be contracted; and in such case so much shall always be allowed by the respective courts in this province as shall make said bills equal in value to such debt when contracted; any thing contained in the aforesaid law to the contrary notwithstanding. [May, 1743.]

All debts to be deemed according to value of the bills when contracted.

Saving an allowance for bills depreciating.

CHAPTER XXVII.

AN ACT IN FURTHER ADDITION TO AN ACT, ASCERTAINING THE VALUE OF MONEY, AND OF THE BILLS OF PUBLICK CREDIT OF THIS PROVINCE.

WHEREAS, notwithstanding the provision that is made in and by an act, passed in the fifteenth year of his present majesty's reign, entitled an act to ascertain the value of money, and of the bills of publick credit of this province, granted this present year for the supply of the treasury, and for securing the credit of said bills, for securing to any creditor or creditors what the bills of credit might sink or depreciate in their value between the time of contracting the debt and the payment thereof, it has been a frequent practice for creditors to exact and take of their debtors for the loan of any sum or sums of money lent, and for forbearance of their debts, more than six per cent., by which practice some of the good and wholesome laws of this province, and the equitable intent and designs of them are eluded, and great op-

pression and injustice introduced, to the reproach of this government, now, for the prevention thereof for the future,

No allowance to be made for the depreciating of the bills where any thing has been allowed already for it.

SECT. 1. Be it enacted by the governor, council and house of representatives, that in all actions hereafter to be brought for the recovering any debt or sum due upon bond, or otherwise contracted and payable in bills of credit since the thirty-first day of March, one thousand seven hundred and forty-two, or that may be contracted within five years of that date, if the debtor will tender his oath in court, that the creditor has received any thing for the loan or forbearance of such debt either in money, bills, goods, or by any new bond, bill, note of hand, order, or under colour of being paid for any service or thing, or by keeping back any part of the sum specified to be paid in the condition of any bond or other specialty, or by any other way or means whatsoever, either directly or indirectly, more than six pounds for the loan or forbearance of one hundred pounds for a year, and so after that rate for a greater or less sum, or for a longer or shorter time, then and in such case, unless the owner will make oath to the contrary, judgment shall be made up only for the exact nominal sum received by or due from the debtor, with lawful interest for the same, if it be payable with interest, but if the creditor will tender and actually give his oath as aforesaid, then judgment shall be entered up for the full value of said debt, as it was at the time of contracting the same.

And whereas there may be debts and sums payable in bills of credit or lawful money yet due and owing from man to man, that were contracted before the said thirty-first day of March, one thousand seven hundred and forty-two, and no provision made in the law for making good to the creditors what the bills, in which such debts or sums might be discharged, have depreciated or fallen, and inasmuch as it appears just and equal that the loss and damage arising to such creditors by the falling and depreciating of the bills of credit since the said thirty-first day of March, should be made good,

Provision for making good the value of the debts before March, 31, 1742.

SECT. 2. Be it further enacted, that in all such cases it shall be in the power of the justices of the several courts within this province, to make up judgment for such additional sum or sums as the said bills shall be found to have depreciated from the said thirty-first day of March, until the time of making up such judgment, but not for any other or longer time, in which judgment the same rule shall be observed as in case of debts contracted after the said thirty-first day of March, as in this act is before provided; saving always to the debtor the same relief in case he has in any manner or way, directly or indirectly, paid or allowed more than six per cent. as aforesaid, as is provided for him in this

act respecting any debt or sum that was contracted or agreed upon after the said thirty-first day of March.

And whereas many of his majesty's subjects in this province, from an apprehension that the bills of credit of the new tenor were to be valued, taken and esteemed as lawful money, from which apprehensions many persons have obliged themselves by their bonds and otherways, to pay lawful money where nothing but said bills were received, or goods for which the creditor would have received bills in payment, nor was any thing else intended or expected by either party at the time of contracting the debt, notwithstanding which some of the executive courts of this province have, contrary to the expectation and intention of the parties as aforesaid, made up their judgments on said debts for lawful money only, and construed the same not to be payable in said bills, whereby the debtor has been capable of discharging or satisfying the execution only with silver, the extreme scarcity of which renders it almost impracticable to satisfy the debt without paying such additional sum to the creditor as he will be pleased to take in said bills, much to the debtor's oppression, which this government ought to prevent, wherefore,

Judgment to be given only for bills where silver was not lent or received.

SECT. 3. Be it enacted, that when any sum or sums of money, due or contracted for since the first emission of the said new tenor bills in the year one thousand seven hundred and forty-one, or that shall be contracted for within the space of five years from that date, on bond, bill, note or otherwise, whether with interest or without, if the debtor will tender his oath that he received of the creditor no silver on which said debt or sum then sued for arose, or that it was not agreed by the parties that silver should be paid in discharge of such debt or sum due, that then and in every such case, unless the creditor will bona fide make oath that silver was received or agreed for, and understood, and intended to be paid by the parties at the time of contracting the said debt or agreement for the sum sued for, the judgment shall be given for bills of credit or lawful money at the debtor's election, allowing in such judgment for what the said bills may have depreciated from the thirty-first day of March, one thousand seven hundred and forty-two, to the time the judgment is made up.

Saving.

Saving always, to the debtor the same relief in cases of this nature which is by this act already provided for him, where more than six per cent. has been paid for the loan or forbearance of any sum as aforesaid. [November, 1744.]

CHAPTER XXVIII.

AN ACT IN FURTHER ADDITION TO AND FOR EXPLANATION OF CERTAIN CLAUSES IN THREE SEVERAL ACTS HEREINAFTER MENTIONED, MADE AND PASSED IN THE FIFTEENTH, SEVENTEENTH AND EIGHTEENTH YEARS OF HIS PRESENT MAJESTY'S REIGN, FOR ASCERTAINING THE VALUE OF MONEY, AND OF THE BILLS OF PUBLICK CREDIT OF THIS PROVINCE.

WHEREAS in and by an act made and passed in the fifteenth year of his present majesty's reign, entitled an act to ascertain the value of money and of the bills of publick credit of this province granted this present year for the supply of the treasury and for securing the credit of said bills, the several courts of judicature are directed, in making up judgments for debts that should be contracted within the term of five years therein limited, except as therein excepted, in case the province bills by said act emitted, or that should thereafter be emitted, should be depreciated below the value they were set at by said act, to allow the creditor so much in said bills as should make amends for their depreciation below their then stated value, or the value at which such other bills should be stated, and whereas in the rule by said act prescribed for determining the value of such bills from time to time for the purpose aforesaid, only silver and bills of exchange are made the standard whereby said bills are to be estimated in order to the payment of private debts to be contracted within the time aforesaid, which rule by experience has been found to be unequal, and not to answer the good intention of the said act, inasmuch as the bills of credit, being the only medium of trade and commerce in this and the other governments in New England, their value cannot be truly estimated by the prices of any one or two particular commodities or merchandizes, such as bills of exchange and silver, now are and have for several years past been within this and the aforesaid other colonies, and the prices of which in bills of publick credit have been found liable to be very suddenly and immoderately increased by a few persons for the sake of serving their own particular trade or interest, whereby the bills of credit have often been to the great grievance of debtors much depreciated with respect to bills of exchange and silver, though at the same time they have kept their value with respect to all other commodities and merchandizes in this province,

Now for preventing any future inconvenience which may arise to the debtor from estimating the value of bills of credit by comparing them with the prices of bills of exchange and silver alone,

Price of provisions, &c. to be considered in the valuation of the bills.

SECT. 1. Be it enacted by the governor, council and house of representatives, that when any valuation shall be made of the bills of publick credit on this province in pursuance of said act, and for the purposes therein mentioned, regard shall be had not only to silver and bills of exchange, but to the prices of provisions and other necessaries of life, and to the difference that may arise from the plenty or scarcity of them, or other circumstances which may casually occasion the rise or fall of them at the respective seasons wherein such valuation shall be made as aforesaid.

And whereas the aforementioned act directs that the valuation of the bills of publick credit as aforesaid, for the purposes aforesaid, shall be made once in every six months by the general assembly, and in want thereof by a committee consisting of the eldest counsellor for the time being, in each of those counties where any member of his majesty's council is an inhabitant, and whereas the said act doth not expressly declare that the determination made by any number of the said committee short of the whole shall be accounted valid for the purposes aforesaid, and doubts and disputes have thereupon arisen, for prevention whereof for the future,

Five counsellors to be a quorum for valuing the bills.

SECT. 2. Be it enacted by the governor, council and house of representatives, that any five of the said counsellors shall be a quorum, and every valuation of the bills of publick credit to be made by the whole number of the said counsellors, or the major part of such of them as shall convene and be present at the time of making the same, provided the number present be not less than five, and that due notice has been previously given to the rest that shall then be within this province of the time, place, and occasion of their meeting, shall be deemed and counted valid in the law for the purposes in said act mentioned.

And whereas although the method of making up judgment on private debts, with allowance for the sinking of the value of the province bills, as prescribed in the aforesaid act, and in another act made and passed in the eighteenth year of his present majesty's reign, entitled an act in further addition to an act for ascertaining the value of money, and of the bills of publick credit of this province, is limited to debts contracted within or before certain periods mentioned in said acts respectively, and is not extended to debts thereafter to be contracted, yet unless some certain term of time be limited for calling in such debts, and for the continuance of the aforesaid method of making up judgment thereupon, many of said debts may be long outstanding, and

in consequence thereof it will be requisite, for a rule to the executive courts in their proceedings, that a valuation of said bills be from time to time made either by the general assembly or such others as by law are appointed for that service, till every of those debts shall be discharged, how long soever that time may be protracted, to the hindrance and interruption of the publick affairs of the province, or to the great trouble, expense and loss of time to those concerned therein, for prevention of which and other inconveniences,

Limitation of the time for bringing actions on this act.

SECT. 3. Be it enacted by the governor, council and house of representatives, that in all and every action and actions which shall be brought from and after the last day of September, which will be in the year of our Lord one thousand seven hundred and forty-nine, the aforementioned method of making up judgments in the several executive courts of this province, on all debts and dues contracted before the last day of March, one thousand seven hundred and forty-seven, by virtue or in consequence of the power and directions given in the acts aforesaid, or either of them, shall cease and determine, and no allowance shall be made in making up such judgments for any depreciation of the bills of credit, unless the debt on which such action shall arise did not become payable till after the last day of September anno Domini one thousand seven hundred and forty-nine, or unless the creditor now be and shall continue out of this province till after the expiration of the said term, and have no lawful agent or attorney therein, or be a person non compos mentis, and have no lawful guardian, or be under some other legal incapacity of bringing his action for the recovery of such debt within the term herein before limited for that purpose; and if after that term suit shall be brought for any such debts, judgments shall be made up according to the last valuation that shall have been then made.

Saving.

And whereas in and by an act made and passed in the seventeenth year of his present majesty's reign, entitled an act in addition to and in explanation of sundry clauses of an act entitled an act to ascertain the value of money, and of the bills of publick credit of this province, made and passed in the fifteenth year of his majesty's reign, it is enacted, "that all debts contracted since the last of March one thousand seven hundred and forty-two, or that shall thereafter be contracted, specialties and express contracts excepted, shall be deemed and adjudged equal to the real value only such bills have passed or shall pass at when such debt was or shall be contracted, and every debt of twenty shillings contracted as aforesaid shall or may be always hereafter discharged by twenty shillings in said bills, and so pro rata for a greater or less sum, unless such bills have already, or should hereafter be depreciated below the value they passed

at when such debt was or shall be contracted, and in such case so much shall always be allowed by the respective courts in this province as shall make said bills equal in value to such debt when contracted,"

And whereas the debts referred to in the said act appear by the purview thereof to be such only as then had been or should be contracted within five years from the last day of March one thousand seven hundred and forty-two, yet as the said act has by some been construed to extend to debts to be contracted after the expiration of said term, and in consequence of such construction, if admitted, many inconveniences may arise,

Wherefore for prevention thereof, and for removing any doubts or disputes touching the meaning of said act in the case before mentioned,

Time for contracting debts that are to have benefit upon depreciation of the bills stated.

SECT. 4. Be it enacted and declared by the governor, council and house of representatives, that the debts referred to and intended in the last herein before recited act are such only as had been or should be contracted within the beforementioned term of five years from the last day of March one thousand seven hundred and forty-two, and that the rule therein given to the courts of judicature respecting the allowance to be made for the depreciation of the bills of publick credit was intended, and shall be adjudged, construed and taken to be restrained to debts contracted within the term aforesaid, and not to extend to any other whatsoever. [August, 1747.]

CHAPTER XXIX.

AN ACT FOR DRAWING IN THE BILLS OF CREDIT OF THE SEVERAL DENOMINATIONS WHICH HAVE AT ANY TIME BEEN ISSUED BY THIS GOVERNMENT AND ARE STILL OUTSTANDING, AND FOR ASCERTAINING THE RATE OF COINED SILVER IN THIS PROVINCE FOR THE FUTURE.

WHEREAS the sum of one hundred and eighty-three thousand six hundred and forty-nine pounds two shillings and seven pence halfpenny sterling money has been granted by the parliament of Great Britain for reimbursing to this province their expenses in taking and securing Cape Breton,

SECT. 1. Be it enacted by the governor, council and house of representatives, that the honourable sir Peter Warren,

Persons empowered to act for the province in taking care of the money granted by parliament for the charge at Cape Breton.

knight of the Bath, William Bollan, Esq. agent for this province, and Eliakim Palmer, Esq. of London, merchant, they or two of them, the said William Bollan, agent as aforesaid, except in case of his death, always to be one, be and are hereby authorised and empowered to give a full discharge to the right honourable the lords commissioners of the treasury for the sum granted as aforesaid whensoever the same shall have been issued, or to the bank of England, in case the same shall have been there deposited, or to any person or persons in whose possession or custody soever the same is or shall be, to prefer the humble address of the general court of this province to the king's most excellent majesty, that he would be graciously pleased to order the said sum to be transported to this government in foreign coined silver, on board some one or more of his majesty's ships, and to pursue such instructions as the said general court shall judge necessary concerning the transportation of the said granted sum to this province.

The province treasurer empowered to receive said money on its arrival.

Sect. 2. And be it further enacted, that the treasurer of the province for the time being, be and hereby is fully authorised and empowered to demand and receive the whole and every part of the money aforesaid from the commander of any vessel or vessels on board of which the same shall be shipped upon the arrival thereof within this government.

The said money to be exchanged for bills of credit.

Sect. 3. And be it further enacted, that from and after the thirty-first day of March, which shall be in the year of our Lord one thousand seven hundred and fifty, the possessor and possessors of each and every of the bills of credit of this province which shall then be outstanding, upon bringing such bill or bills to the treasurer aforesaid, shall be entitled to and receive in exchange for every such bill or bills, silver at the rate following, viz. for every forty-five shillings, in bills commonly known and understood by bills of the old form and tenor, one piece of eight, and for every eleven shillings and three pence in bills of the new form and tenor, and also of the middle form and tenor, one piece of eight, and so proportionably for a greater or less sum in the bills of each and any of the forms and tenors aforesaid; provided nevertheless, that if the possessors aforesaid shall not offer such bills in exchange within one year from and after the said thirty-first day of March, one thousand seven hundred and fifty, all right or claim to the redemption or exchange thereof shall determine and cease.

Proviso respecting bills of the neighbouring governments.

Provided always, that such of the bills of credit of this province, as shall be the property of the inhabitants of Connecticut, New Hampshire and Rhode Island, may and shall be redeemed or exchanged by the bills of credit of each of those governments respectively that may be in the hands of the inhabitants of this government; any thing in this act to the contrary notwithstanding.

And whereas all debts, dues, demands, bargains and contracts whatsoever, unless otherwise specially agreed or contracted, are now understood to be payable and may be discharged by the publick bills of credit of this province, and upon any action or actions being brought in the courts of judicature within this province, and judgment being made upon such action and execution issued, such execution may be now satisfied and discharged by the publick bills of credit as aforesaid, with the addition of a greater or less sum, according to the time when such debts were contracted,

Contracts after March 31, 1750, to be understood to be in silver money.

SECT. 4. Be it enacted, that from and after the thirty-first day of March, which shall be in the year of our Lord one thousand seven hundred and fifty, all debts, dues, demands, bargains and contracts, payable in bills of credit as aforesaid, shall be understood to be payable in coined silver only; and all executions in consequence of any judgment of court in all actions heretofore brought or that may at any time hereafter be brought for the recovery of such debts, dues, demands, bargains and contracts, made and contracted as aforesaid, shall and may be then discharged by silver at the rate following, viz. every forty-five shillings of such debts, dues or demands which were payable or might be discharged by bills of the old tenor, shall and may be discharged by one milled piece of eight, and every eleven shillings and three pence of such debts, dues or demands which were payable or might be discharged by bills of the middle tenor, or by bills of the new tenor, shall and may be discharged by one milled piece of eight, with such addition, according to the time of contracting, as the laws of this province do or shall require; and so proportionably of any debt or demand of greater or less value.

And whereas, in and by the several acts of this government for issuing the publick bills of credit, provision has been made for drawing said bills into the publick treasury again by certain taxes, which it is provided by said acts shall be laid on the several towns in this government in each of the several years from this present year until the year one thousand seven hundred and sixty,

Repeal of the clauses in divers acts for taxes.

SECT. 5. Be it further enacted, that the several clauses in the acts aforesaid, providing for the bringing into the province treasury by taxes the several sums in bills of credit issued by virtue of such acts, be and hereby are repealed and declared null and void.

And whereas the sum granted by parliament as aforesaid may prove insufficient to redeem or exchange the whole sum which is now outstanding in said bills of credit, at the rates aforesaid,

Tax of 75,000l. to be levied in 1749.

SECT. 6. Be it further enacted, that there be and hereby is granted unto his most excellent majesty a tax of seventy-five thousand pounds to be levied on polls and estates both

real and personal within this province, according to such rules and in such proportions on the several towns and districts within the same as shall be agreed upon and ordered by this court at their session in May, one thousand seven hundred and forty-nine, to be paid into the publick treasury on or before the last of December then next ensuing; and the tax aforesaid is hereby declared to be payable in bills of credit of the new form and tenor, or of the middle form and tenor according to their respective denominations, or in bills of the old tenor, accounting four for one, or in Spanish milled dollars at the rate of eleven shillings and three pence each.

Treasurer to issue his warrants in case there be no act for apportioning said tax.

SECT. 7. And be it further enacted, that in case the general court shall not at their sessions in May and before the twentieth day of June one thousand seven hundred and forty-nine, agree and conclude upon an act apportioning the sum which by this act is engaged shall be in said year apportioned, assessed and levied, that then and in such case each town and district within this province shall pay, by a tax to be levied on the polls and estates both real and personal within their districts, the same proportion of the said sum as the said towns and districts shall have been taxed by the general court in the tax act then last preceding; and the province treasurer is hereby fully empowered and directed some time in the month of June, in the year one thousand seven hundred and forty-nine, to issue and send forth his warrants directed to the selectmen or assessors of each town and district within this province, requiring them to assess the polls and estates both real and personal within their several towns and districts for their respective part and proportion of the sum before directed, and engaged to be assessed; and the assessors, as also persons assessed, shall observe, be governed by and subject to all such rules and directions as shall have been given in the last preceding tax act; and if there be any surplusage, it shall remain a stock in the treasury.

And whereas it is provided by this act, that the whole sum now outstanding in bills of credit which have been the medium and instrument of trade and commerce for many years past shall be sunk, partly by a tax, and partly by being exchanged for the sum granted by parliament as aforesaid, which sum may prove sufficient to serve as a medium instead of said bills, and it being of great importance that all possible means should be used for establishing an invariable silver currency for the future,

Contracts and debts to be paid after March 31,

SECT. 8. Be it enacted, that all bargains and contracts, debts and dues whatsoever which shall be agreed, contracted or made after the thirty-first day of March, one thousand seven hundred and fifty, shall be understood and are hereby declared to be in silver at six shillings and eight pence per

ounce, and all Spanish milled pieces of eight, of full weight, shall be accounted, taken and paid at the rate of six shillings per piece for the discharge of any contracts or bargains to be made after the said thirty-first day of March one thousand seven hundred and fifty, the halves, quarters and other less pieces of the same coin, to be accounted, received, taken or paid in the same proportion; and if any person shall for the discharge of any such contracts or bargains account, receive, take or pay any silver coin or any of the said pieces at any greater or higher rate than that at which the same is hereby regulated and allowed, every such person so accounting, receiving, taking or paying the same, shall forfeit the sum of fifty pounds for every offence, one moiety thereof to his majesty, his heirs and successors to and for the use of this government, the other moiety to him or them that shall sue for the same, to be recovered with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty's courts of record within this province, or by presentment of the grand jury; and all persons whatsoever are hereby required to conform their books and accounts according to the regulation aforesaid, any former usage to the contrary notwithstanding; and any books and accounts which shall not be made to conform to the said regulation shall not be admitted or allowed to be produced in evidence for the recovery of any debt in any of his majesty's courts within this province.

1750, in silver money.

Rates of Spanish money.

Penalty to those who receive or pay silver money at any higher rate.

And whereas bills of credit have been the only medium of trade within this government for many years past, and the bills of Connecticut, New Hampshire and Rhode Island, have passed promiscuously with the bills of this government, and the inhabitants of this government will be liable to greater evils than they have ever yet suffered, if the bills of those governments continue current within this province,

Sect. 9. Be it further enacted, that if any person from and after the thirty-first day of March one thousand seven hundred and fifty, shall account, receive, take or pay any bill or bills of credit of either of the governments of Connecticut, New Hampshire, or Rhode Island, in discharge of any contract or bargain, or for any valuable consideration whatsoever, every such person so accounting, receiving, taking or paying the same, shall forfeit the sum of fifty pounds for every offence, to be recovered and applied in like manner with the forfeiture or penalty for receiving or paying silver coin at any higher rate than is regulated by this act.

Penalty for receiving or passing bills of the neighbouring governments.

Sect. 10. And be it further enacted, that from and after the last day of March, which shall be in the year of our Lord one thousand seven hundred and fifty, until the last day of March, which shall be in the year of our Lord one thousand seven hundred and fifty-four, every person who shall

Oath to be taken by persons chosen to office that

they have not received or paid said bills.

be chosen to serve in any office in any of the towns of this province shall, before his entrance upon said office, take the following oath, to be administered by a justice of the peace, or where no justice of the peace shall be present, by the town clerk, who is hereby empowered to administer the same, viz.

Form of the oath.

You A. B. do in the presence of God solemnly declare, that you have not, since the last day of March one thousand seven hundred and fifty, wittingly and willingly, directly or indirectly, either by yourself or any for or under you, been concerned in receiving or paying within this government any bill or bills of credit of either of the governments of Connecticut, New Hampshire or Rhode Island. So help you GOD.

Penalty in case of refusal to take said oath.

And where any person chosen as aforesaid shall refuse or neglect to take the oath aforesaid on tendering the same, the town shall proceed to the choice of another person in his room, and where any person shall be elected during the term aforesaid by any town into any office to the non-acceptance or refusal whereof a penalty is by law annexed, such person neglecting or refusing to take the oath aforesaid shall be liable to the same penalty as is by law provided for the non-acceptance or refusal of such office.

Persons chosen representatives to take the said oath.

SECT. 11. And be it further enacted, that when any person during the term aforesaid shall be chosen to represent any town within this province in the general court or assembly, such person so chosen shall take the oath aforesaid, and return shall be made by the selectmen upon the back of the precept, that the person so chosen has taken the oath required in the act made and passed in the twenty-second year of his majesty king George the second, entitled an act for drawing in the bills of credit of the several denominations which have at any time been issued by this government and are still outstanding, and for ascertaining the rate of coined silver in this province for the future,

And if any person so chosen shall refuse or neglect to take the oath aforesaid, such refusal or neglect shall be deemed a refusal to serve as a representative, and the town shall proceed to the choice of another person in his room.

Councellors to take said oath.

SECT. 12. And be it further enacted, that the oath aforesaid shall be administered to each of the members of his majesty's council every year during the term aforesaid, at the same time when the usual oaths required to be taken by the said members of his majesty's council shall be administered; and all officers civil and military within this government, who shall be nominated or appointed during the term aforesaid, shall, before they receive their respective commissions, take the oath aforesaid, and their respective commissions shall otherwise be void; and all persons elected into any office during the term aforesaid by the general as-

As also officers chosen by the general court.

sembly shall be deemed not qualified to enter upon the execution of their respective offices until they have taken the oath aforesaid; and all officers civil and military appointed by this government who shall be in commission in the month of June, one thousand seven hundred and fifty-three, shall some time in said month take the oath aforesaid, and in case of neglect thereof, their respective commissions shall become and are hereby declared to be void. And all other officers civil and military.

Sect. 13. And be it further enacted, that no execution shall be issued during the term aforesaid from the office of any clerk of any of the inferiour courts of common pleas or of the superiour courts of judicature for any sum whatsoever, unless the plaintiff or plaintiffs, suing in his or their own right and dwelling within this province, shall first take the oath aforesaid, and certificate thereof shall be made on such execution, and if any execution shall issue or go forth during the term aforesaid without such certificate, the same shall be and is hereby declared to be void; and no license shall be granted to, nor any recognizance taken from any taverner, innholder or retailer, by the justices of any of the courts of sessions within this province during the term aforesaid, until such taverner, innholder or retailer shall have taken said oath in presence of the court, or certificate of his having so done from a justice of peace shall be presented to the court; provided always, that when any inhabitant of this province shall be sued or have his person or estate taken by mean process, or in execution for any debt contracted before the thirty-first day of March one thousand seven hundred and fifty, with any of the inhabitants of either of the governments aforesaid, upon making oath that he was possessed of any sum in bills of credit of the government to which his creditor belongs, before the said thirty-first day of March one thousand seven hundred and fifty, and has continued to be so possessed, he shall have liberty to tender the same, and the creditor shall be obliged to accept the same towards payment or discharge of such debt in like manner as if this act had never passed; provided also, and it is accordingly to be understood, that if the bills of credit of said governments of Connecticut, New Hampshire and Rhode Island shall be drawn in and sunk, and the paper currency of said governments shall be brought to an end and cease at any time before the said thirty-first day of March one thousand seven hundred and fifty-four, then and in such case the three last preceding enacting clauses of this act, shall become void and have no further effect. Also plaintiffs suing out executions. Also taverners, innholders and retailers. Proviso. Proviso.

And whereas the sum of one hundred and eighty-three thousand six hundred and forty-nine pounds two shillings and seven pence halfpenny sterling, granted by parliament as aforesaid, and the further sum of seventy-five thousand pounds now granted to be assessed in bills of credit in the

year one thousand seven hundred and forty-nine, on the polls and estates of the inhabitants of this province, are by this act become the sole fund and security for the whole sum in bills of credit outstanding, and in case the said sterling sum granted as aforesaid be not imported into this province before the said thirty-first day of March one thousand seven hundred and fifty, the exchanging the bills of credit as is above intended will be rendered impracticable, and the former funds or securities being made void, there will remain a fund for seventy-five thousand pounds only, and the remainder of the said bills of credit will become of no value to the possessors,

Acts for drawing in the bills to be in force in case the silver money should not arrive in the province before the 31st of March, 1750.

SECT. 14. Be it therefore provided, and it is accordingly hereby enacted, that if the sum granted by parliament as aforesaid, shall not be received within this government on or before the thirty-first day of March one thousand seven hundred and fifty, then and in such case the several acts of this province for drawing in the said bills, and all and every part of said acts, shall be and continue in full force, any thing in this act to the contrary notwithstanding, and all and every part of this act shall be void and have no further effect.

Saving.

Saving always, that whereas the sum of one hundred and thirty thousand five hundred pounds in said bills of credit is engaged by said acts to be drawn in by a tax in the year one thousand seven hundred and forty-nine, and by this act provision is made for drawing seventy-five thousand pounds, part of said sum only, in said year, which part of this act may have had its effect, and the time will be elapsed for drawing in the remaining part of said one hundred and thirty thousand five hundred pounds,

SECT. 15. It is therefore hereby enacted and declared, that in such case the sum of fifty-five thousand five hundred pounds, the remaining part of said sum of one hundred and thirty thousand five hundred pounds, shall be and hereby is added to the tax of thirty-five thousand pounds, engaged to be assessed in the year one thousand seven hundred and fifty, and the inhabitants of this province shall be assessed for said sum at the same time and in like manner and proportion as is by law provided that they shall be assessed for said thirty-five thousand pounds; and the treasurer is hereby required to issue his warrants accordingly. [December, 1748.]

CHAPTER XXX.

AN ACT IN ADDITION TO AND RENDERING MORE EFFECTUAL AN ACT, ENTITLED AN ACT FOR DRAWING IN THE BILLS OF CREDIT OF THE SEVERAL DENOMINATIONS WHICH HAVE AT ANY TIME BEEN ISSUED BY THIS GOVERNMENT, AND ARE STILL OUTSTANDING, AND FOR ASCERTAINING THE RATE OF COINED SILVER IN THIS PROVINCE FOR THE FUTURE, MADE IN THE TWENTY-SECOND YEAR OF HIS PRESENT MAJESTY'S REIGN.

WHEREAS it is declared and provided in said act in the words following, "and whereas the sum of one hundred and eighty-three thousand six hundred and forty-nine pounds two shillings and seven pence halfpenny sterling, granted by parliament as aforesaid, and the further sum of seventy-five thousand pounds now granted to be assessed in bills of credit in the year one thousand seven hundred and forty-nine on the polls and estates of the inhabitants of this province, are by this act become the sole fund and security for the whole sum in bills of credit outstanding, and in case the said sterling sum granted as aforesaid be not imported into this province before the said thirty-first day of March one thousand seven hundred and fifty, the exchanging the bills of credit, as is above intended, will be rendered impracticable, and the former funds and securities being made void, there will remain a fund for seventy-five thousand pounds only, and the remainder of said bills of credit will become of no value to the possessors, be it therefore provided, and it is accordingly hereby enacted, that if the sum granted by parliament as aforesaid, shall not be received within this government on or before the thirty-first day of March one thousand seven hundred and fifty, then and in such case the several acts of this province for drawing in the said bills, and all and every part of said acts, shall be and continue in full force, any thing in this act to the contrary notwithstanding, and all and every part of this act shall be void and have no further effect,"

And whereas certain deductions and stoppages have been made from the aforesaid sum of one hundred and eighty-three thousand six hundred and forty-nine pounds two shillings and seven pence halfpenny sterling, by means whereof the whole and every part of said sum has not yet been and cannot be received within this government before the said thirty-first of March one thousand seven hundred and fifty,

which has occasioned doubts and uncertainty in the minds of some, whether the said act is not or may not thereby become void and of no effect,

Act for drawing in the bills of credit, &c. confirmed.

Be it therefore enacted by the lieutenant governor, council and house of representatives, that the said act be and hereby is declared to be in as full force, and shall have the same effect to all intents and purposes, as if the exact sum of one hundred eighty-three thousand six hundred and forty-nine pounds two shillings and seven pence halfpenny sterling had been received within this government without any deductions or stoppages made as aforesaid, any construction that has been or may be put on the aforesaid paragraph to the contrary notwithstanding. [November, 1749.]

CHAPTER XXXI.

AN ACT IN ADDITION TO AN ACT MADE AND PASSED IN THE TWENTY-SECOND YEAR OF HIS MAJESTY'S REIGN, ENTITLED AN ACT FOR DRAWING IN THE BILLS OF CREDIT OF THE SEVERAL DENOMINATIONS WHICH HAVE AT ANY TIME BEEN ISSUED BY THIS GOVERNMENT AND ARE STILL OUTSTANDING, AND FOR ASCERTAINING THE RATE OF COINED SILVER IN THIS PROVINCE FOR THE FUTURE.

WHEREAS in and by an act made and passed in the twenty-second year of his present majesty's reign, entitled an act for drawing in the bills of credit of the several denominations which have at any time been issued by this government and are still outstanding, and for ascertaining the rate of coined silver in this province for the future, it is among other things enacted and declared in the words following, viz. "that no execution shall be issued during the term aforesaid from the office of any clerk of any of the inferiour courts of common pleas or of the superiour courts of judicature, for any sum whatsoever, unless the plaintiff or plaintiffs, suing in his or their own right, shall first take the oath aforesaid, and certificate thereof shall be made on such execution;" and whereas such clerk ex officio is not empowered to administer such oath, and by means thereof great delay may be occasioned to many plaintiffs, and loss and damage thereby arise,

Clerks of the courts empowered to administer oaths upon taking out executions.

SECT. 1. Be it therefore enacted, that the clerks of the superiour court of judicature, and the several clerks of the inferiour courts of common pleas within this province, be and hereby are empowered to administer such oath, when it hath not already been done before a justice of peace, and certified to the clerk, to any plaintiff or plaintiffs whatsoever, suing in his or their right and dwelling within this province, and certificate may and shall be made thereof accordingly; and for administering the oath as aforesaid such clerk shall be allowed three pence and no more.

Fee for administering the oath and for certifying it.

SECT. 2. And be it further enacted, that for each certificate on an execution, the clerk of the court signing the same shall be allowed three pence lawful money, and no more; and the cost and charge of such oath and certificate shall be added to the sum in the execution required to be levied accordingly. [March, 1750.]

CHAPTER XXXII.

AN ACT AGAINST DIMINISHING OR COUNTERFEITING MONEY.

Punishment for counterfeiting, clipping or diminishing any coin, &c.

SECT. 1. BE it enacted by the lieutenant governor, council and house of representatives, that if any person or persons after the publication of this act shall forge or counterfeit money or coin, the currency of which is established or regulated by the laws of this province, or shall forge or counterfeit any money or coin that is or shall be current in this province, or shall for gain wash, clip, round, file, impair, falsify, scale, lighten or diminish any or either of the monies or coins aforesaid, or that shall utter any such false, forged, counterfeit, washed, clipped, rounded, filed, impaired, scaled, lightened, or diminished money or coin, knowing the same to be false, forged, counterfeited, washed, clipped, rounded, filed, impaired, scaled, lightened or diminished, and be thereof convicted at the superiour court of judicature, court of assize and general gaol delivery, every such person shall be fined at the discretion of the said court, and also be set in the pillory for the space of one hour, and then have one of his, her or their ears cut off, and from thence be drawn to the gallows and set thereon with a rope about his, her or their necks for the space of an hour, and shall then be publickly whipped not exceeding twenty stripes, and shall then be committed to the house of correction, but not re-

Or uttering such coin.

ceive the usual punishment at his, her or their first entrance, and be kept to hard labour for the space of three years.

Proviso. Provided nevertheless, that the justices of said court may and shall at their discretion abate any part of the pains and penalties aforesaid, according to the circumstance of the offence; and upon a second conviction of any or either of the offences aforesaid, such offender or offenders shall be committed to the house of correction, and there kept to hard labour for the space of twenty years.

Punishment on a second conviction.

Saving. Saving always, that nothing in this act mentioned shall be construed so as to prevent any goldsmith or other person from melting into bullion or working into plate any of the monies aforesaid, except his majesty's coins.

Proviso. Provided also, that the making use of the copper halfpence and farthings for the making and mending any vessel shall not be construed a breach of this act.

Reward to the informer. SECT. 2. And be it further enacted, that whoever shall inform of any of the foregoing offences, so as the offender or offenders may be convicted of the same, such informer shall receive out of the treasury of this province the sum of twenty-five pounds.

Penalty for buying clippings of coin, &c. SECT. 3. And be it further enacted, that whoever shall buy or receive any clippings, scalings or filings of any of the aforesaid coins, knowing them to be clippings, scalings or filings of the same, shall be imprisoned for the space of one year, and pay a fine of fifty pounds, one moiety whereof shall be to his majesty for and towards the use of the government within this province, and the other moiety to him or them that shall inform of said offence, so as the offender or offenders may be convicted of the same. [March, 1750.]

CHAPTER XXXIII.

AN ACT FOR ASCERTAINING THE RATES AT WHICH COINED SILVER AND GOLD, AND ENGLISH HALFPENCE AND FARTHINGS MAY PASS WITHIN THIS GOVERNMENT.

WHEREAS in and by an act made and passed in the twenty-second year of his present majesty's reign, entitled an act for drawing in the bills of credit of the several denominations which have at any time been issued by this government and are still outstanding, and for ascertaining the rate of coined silver in this province for the future, it is enacted in the

words following, viz. "that all bargains and contracts, debts and dues whatsoever, which shall be agreed, contracted or made after the thirty-first day of March one thousand seven hundred and fifty, shall be understood and are hereby declared to be in silver at six shillings and eight pence per ounce, and all Spanish milled pieces of eight of full weight shall be accounted, taken and paid at the rate of six shillings per piece for the discharge of any contracts or bargains to be made after the said thirty-first day of March one thousand seven hundred and fifty, the halves, quarters and other less pieces of the same coin to be accounted, received, taken or paid in the same proportion," and whereas there is great reason to apprehend that many and great inconveniences may arise in case any coined silver or gold, or English halfpence and farthings should pass at any higher rate than in a just proportion to Spanish pieces of eight, or coined silver at the rates aforesaid,

Rates of coins stated.

SECT. 1. Be it therefore enacted by the lieutenant governor, council and house of representatives, that it shall not be lawful for any person within this government, from and after the thirty-first day of March one thousand seven hundred and fifty, to receive, take or pay any of the following coins at any greater or higher rate than is allowed by this act, viz. a guinea at twenty-eight shillings, an English crown at six shillings and eight pence, a half crown at three shillings and four pence, an English shilling at one shilling and four pence, an English sixpence at eight pence, a double johannes or gold coin of Portugal of the value of three pounds twelve shillings sterling at four pounds sixteen shillings, a single johannes of the value of thirty-six shillings sterling at forty-eight shillings, a moidore at thirty-six shillings, a pistole of full weight at twenty-two shillings, three English farthings for one penny, and English halfpence in greater or less numbers in proportion.

Penalty for giving more for any the said coins than according to establishment.

SECT. 2. And be it further enacted, that if any person within this government shall, after the thirty-first day of March one thousand seven hundred and fifty, for the discharge of any contract or bargain, account, receive, take or pay any of the several species of coins beforementioned at any greater or higher rate than at which the same is hereby regulated, settled and allowed to be accounted, received, taken or paid, every person so accounting, receiving, taking or paying the same contrary to the directions herein contained, shall forfeit the sum of fifty pounds for every such offence, one moiety thereof to his majesty for the use of this government, the other moiety to such person or persons as shall sue for the same, to be recovered with full costs of suit by action of debt, bill, plaint or information in any of his majesty's courts within this province.

Proviso relating to bargains, &c. made before March 31st, 1750.

Provided always, and it is hereby declared, that nothing in this act shall be understood to restrain any person or persons from accounting, receiving, taking or paying any of the abovementioned species of coins in discharge of any debts, contracts or bargains made before the thirty-first day of March one thousand seven hundred and fifty, at the following rates, viz. for any debt contracted before the said thirty-first day of March, and understood to be payable in bills of the old tenor in such proportion higher or greater than the rates set at in this act, as forty-five shillings is to six shillings, and for any debt contracted before the said thirty-first day of March, and understood to be payable in bills of the middle tenor or bills of the new tenor, in such proportion higher or greater than the rates set at in this act as eleven shillings and three pence is to six shillings, any thing in this act to the contrary notwithstanding. [March, 1750.]

CHAPTER XXXIV.

AN ACT TO PREVENT STAGE-PLAYS AND OTHER THEATRICAL ENTERTAINMENTS.

For preventing and avoiding the many and great mischiefs which arise from publick stage-plays, interludes and other theatrical entertainments, which not only occasion great and unnecessary expenses, and discourage industry and frugality, but likewise tend generally to increase immorality, impiety and a contempt of religion,

Penalty for letting any house for stage-plays, &c.

Sect. 1. Be it enacted by the lieutenant governor, council and house of representatives, that from and after the publication of this act no person or persons whosoever shall or may, for his or their gain, or for any price or valuable consideration, let or suffer to be used and improved any house, room or place whatsoever, for acting or carrying on any stage-plays, interludes or other theatrical entertainments, on pain of forfeiting and paying for each and every day or time such house, room or place shall be let, used or improved contrary to this act, twenty pounds.

Penalty to actors and spectators.

Sect. 2. And be it further enacted, that if at any time or times whatsoever from and after the publication of this act any person or persons shall be present as an actor in or spectator of any stage-play, interlude, or theatrical entertainment in any house, room or place where a greater num-

ber of persons than twenty shall be assembled together, every such person shall forfeit and pay, for every time he or they shall be present as aforesaid, five pounds.

The forfeitures and penalties aforesaid to be one half to his majesty for the use of the government, the other half to him or them that shall inform and sue for the same; and the aforesaid forfeitures and penalties may likewise be recovered by presentment of the grand jury, in which case the whole of the forfeiture shall be to his majesty for the use of this government. [March, 1750.]

Disposal and manner of recovering the penalties.

CHAPTER XXXV.

AN ACT IN ADDITION TO THE ACT, ENTITLED AN ACT TO ENCOURAGE THE INCREASE OF SHEEP AND GOATS.

WHEREAS in and by an act made in the fourteenth year of his present majesty's reign, entitled an act to encourage the increase of sheep and goats, it is enacted, "that from and after the publication of the said act, no rams or he-goats shall be suffered to go at large, or be out of the inclosure of the owner thereof, from the tenth day of August till after the fifteenth day of November annually, under penalty of fifteen shillings," which has been found inconvenient in some towns in this province, inasmuch as by a strict adherance to the said act the lambs and kids will annually come too late for profit, wherefore,

Be it enacted by the lieutenant governor, council and house of representatives, that it shall be in the power of any town, at a town meeting for that purpose appointed, by a vote to give liberty for rams or he-goats to go at large within the bounds of such town, at any other times than those limited in said act, or to restrain them, as the several towns at such meeting shall think proper; and in such case it shall be lawful for any and every person or persons to suffer his or their rams and he-goats to go at large, any thing in the before recited act to the contrary notwithstanding. [March, 1750.]

Towns may give liberty for sheep and goats to go at large, &c.

CHAPTER XXXVI.

AN ACT IN ADDITION TO AN ACT ENTITLED AN ACT AGAINST DIMINISHING OR COUNTERFEITING MONEY.

WHEREAS in and by an act, made and passed in the twenty-third year of his present majesty's reign, entitled an act against diminishing or counterfeiting money, it is among other things provided, that when any person shall be convicted of any of the offences therein mentioned at the superiour court of judicature, court of assize and general gaol delivery, every such person shall be fined at the discretion of the said court, and whereas it sometimes happens that such offender is not able to pay the adjudged fine, or so much as the costs of prosecution,

Persons convicted for counterfeiting or diminishing money to be sold, in case.

Be it enacted by the governor, council and house of representatives, that when any person shall be convicted as aforesaid, and thereupon sentenced by the said court to pay a fine, if such offender shall be unable, or shall refuse to pay the same, together with the costs of prosecution, the sheriff of the county where such offender shall have been so convicted, shall be and hereby is empowered to dispose of said offender in service to any of his majesty's subjects for such term as shall be assigned by the court aforesaid, not exceeding the space of ten years; and the sheriff shall pay the money thereby raised into the publick treasury, having first deducted so much as shall be necessary to pay the cost of prosecution. [December, 1753.]

CHAPTER XXXVII.

AN ACT FURTHER TO EXEMPT PERSONS COMMONLY CALLED QUAKERS AND ANABAPTISTS FROM PAYING MINISTERIAL TAXES.

WHEREAS the several acts for exempting persons commonly called quakers and anabaptists within this province from being taxed for and towards the support of ministers are expired,

SECT. 1. Be it enacted by the governor, council and house of representatives, that from and after the first day of Feb-

ruary next, none of the persons commonly called quakers or anabaptists, who allege a scruple of conscience as the reason of their refusal to pay any part or proportion of such taxes as are from time to time assessed for the support of the minister or ministers of any church settled by the laws of this province, in the town, district, precinct or parish, where they dwell, shall have their poll or estate, real or personal, in their own hands, and under their actual improvement, taxed towards the settlement or support of such minister or ministers, nor for building or repairing any meeting house, or place of publick worship.

Quakers and anabaptists exempted from taxes for ministers and meeting houses.

And to the intent that it may be the better known what persons are of the persuasion of the people called quakers, who are exempted by this act,

SECT. 2. Be it further enacted, that no person in any town, district, precinct or parish, within the limits of this government, shall for the future be esteemed or accounted to be a quaker, and have his poll or polls, or any estate to him or her belonging, exempted from paying a proportionable part of the ministerial taxes, that shall be raised therein, but such whose name shall be contained in a list or lists to be taken and exhibited on or before the first day of February next, and afterwards during the continuance of this act, on or before the twentieth day of July annually, to the assessors of such town, district, precinct or parish, and signed by three or more of the principal members of that meeting to which he or they belong, who shall therein certify, that they verily believe, the persons whose names are inserted in said list or lists are really belonging thereto, and are conscienciously of their persuasion, and that they do frequently and usually attend their meetings for the worship of God on the Lord's day.

Rule for denominating persons quakers in the sense of the law.

And to the intent that the anabaptists, who are truly such, and therefore exempted by this act, may be the better known and distinguished from those who pretend to be, but really are not of that persuasion,

SECT. 3. Be it further enacted, that no person in any town, district, precinct or parish as aforesaid, shall be so esteemed or accounted to be an anabaptist, as to have his or her poll or polls, or any estate to him or her belonging exempted from paying a proportionable part of the ministerial taxes, that shall be raised therein, but such whose names shall be contained in a list or lists to be taken and exhibited on or before the first day of February next, and afterwards during the continuance of this act on or before the twentieth day of July annually, to the assessors of such town, district, precinct or parish, and signed by three principal members of the anabaptist church, to which he or they belong, and the minister thereof, if any there be, who shall therein certify, that the persons, whose names are inserted in said list

Rule for denominating persons anabaptists in the sense of the law.

or lists, are really belonging thereto, that they verily believe them to be conscienciously of their persuasion, and that they do frequently and usually attend the publick worship in such church on the Lord's day. [November, 1757.]

CHAPTER XXXVIII.

AN ACT, PROVIDING THAT THE SOLEMN AFFIRMATION OF THE PEOPLE CALLED QUAKERS SHALL IN CERTAIN CASES BE ACCEPTED, INSTEAD OF AN OATH IN THE USUAL FORM.

WHEREAS the people called quakers profess to be in their consciences scrupulous of taking an oath in the form by law required,

Quakers permitted to make affirmation.

SECT. 1. Be it therefore enacted by the governor, council and house of representatives, that from and after the tenth day of February one thousand seven hundred and fifty-nine, every quaker within this province who shall be required upon any lawful occasion to take an oath, where by law an oath is required, shall instead of the usual form be permitted to make his or her solemn affirmation or declaration in the words following, viz.

Form of affirmation.

I A. B. do solemnly and sincerely affirm and declare under the pains and penalties of perjury.

Affirmation to be of force and effect, &c.

Which said solemn affirmation or declaration shall be adjudged and taken, and it is hereby enacted and declared to be of the same force and effect to all intents and purposes in all courts of justice, and other places where by law an oath is required within this province, as if such quaker had taken an oath in the usual form.

False affirmation to be deemed perjury.

SECT. 2. And be it further enacted, that if any quaker making such solemn affirmation or declaration shall be lawfully convicted wilfully, falsely and corruptly, to have affirmed or declared any matter or thing, which, if the same had been in the usual form, would have amounted to wilful and corrupt perjury, every such quaker so offending shall incur the same penalties and forfeitures as by the laws of this province are enacted against persons convicted of wilful and corrupt perjury.

Proviso.

SECT. 3. Provided always, and be it enacted, that no quaker or reputed quaker shall by virtue of this act be qualified or permitted to serve on any jury in any of the courts within this province, without taking the oath by law required, except in civil causes only, and in such causes such persons

shall be liable to serve as a juror on taking the affirmation afore mentioned, and on refusing to take the same shall be subjected to the same fine that others are by law subjected to for not serving as jurors, nor bear any office in this government where an oath is by law required to qualify a person for the discharge of such office, except in town offices only, and in such case not to serve as an assessor or collector for any rate or tax to be made for the support of the minister or ministers in any town, or for building or repairing of any house for the publick worship of God within the same.

In case the majority of assessors or collectors chosen being quakers, towns empowered to choose other persons, &c.

SECT. 4. And be it further provided and enacted, that where one half or more of the assessors or collectors of any town shall be of the people called quakers, such of the inhabitants of said town who are not quakers may and shall, at the same meeting at which such assessors or collectors being quakers are chosen, proceed to the choice of an equal number of other persons who are not quakers, and such assessors or collectors so chosen shall be as fully qualified by themselves where the whole number of the first chosen assessors are quakers, or together with the other assessors who are not quakers, when any such there be, to make rates and taxes for the settlement and support of the ministry, and for building and repairing any house or houses for the publick worship of God within such town, and for no other purposes; and such collector shall be as fully empowered to collect the same as they the said assessors and collectors would have been, had no other assessors or collectors been before chosen; and any assessor or collector so chosen shall be liable to the same penalty for refusing to serve in their respective office as he would have been had he been chosen and refused to serve as assessor or collector of all the rates and taxes in said town. [December, 1758.]

CHAPTER XXXIX.

AN ACT OF PARLIAMENT FOR THE BETTER REGULATING THE GOVERNMENT OF THE PROVINCE OF THE MASSACHUSETTS BAY IN NEW ENGLAND.

WHEREAS by letters patent under the great seal of England, made in the third year of the reign of their late majesties king William and queen Mary, for uniting, erecting and incorporating the several colonies, territories and tracts of land therein mentioned into one real province by the name

of their majesties' province of the Massachusetts bay in New England, whereby it was amongst other things ordained and established, that the governor of the said province should from thenceforth be appointed and commissionated by their majesties, their heirs and successors, it was however granted and ordained, that from the expiration of the term for and during which the eight and twenty persons named in the said letters patent were appointed to be the first counsellors or assistants to the governor of the said province for the time being, the aforesaid number of eight and twenty counsellors or assistants should yearly once in every year, for ever thereafter, be by the general court or assembly newly chosen, and whereas the said method of electing such counsellors or assistants, to be vested with the several powers, authorities and privileges therein mentioned, although conformable to the practice theretofore used in such of the colonies thereby united, in which the appointment of the respective governors had been vested in the general courts or assemblies of the said colonies, hath, by repeated experience, been found to be extremely ill adapted to the plan of government established in the province of the Massachusetts bay, by the said letters patent herein before mentioned, and hath been so far from contributing to the attainment of the good ends and purposes thereby intended, and to the promoting of the internal welfare, peace and good government of the said province, or to the maintenance of the just subordination to and conformity with the laws of Great Britain, that the manner of exercising the powers, authorities and privileges aforesaid, by the persons so annually elected, hath for some time past been such as had the most manifest tendency to obstruct, and in great measure defeat the execution of the laws, to weaken the attachment of his majesty's well-disposed subjects in the said province to his majesty's government, and to encourage the ill-disposed among them to proceed even to acts of direct resistance to and defiance of his majesty's authority, and it hath accordingly happened that an open resistance to the execution of the laws hath actually taken place in the town of Boston and the neighbourhood thereof, within the said province, and whereas it is, under these circumstances, become absolutely necessary, in order to the preservation of the peace and good order of the said province, the protection of his majesty's well disposed subjects therein resident, the continuance of the mutual benefits arising from the commerce and correspondence between this kingdom and the said province, and the maintaining of the just dependence of the said province upon the crown and parliament of Great Britain, that the said method of annually electing the counsellors or assistants of the said province should no longer be suffered to continue, but that the appointment of the said counsellors or assistants should

henceforth be put upon the like footing as is established in such other of his majesty's colonies or plantations in America, the governors whereof are appointed by his majesty's commission under the great seal of Great Britain,

SECT. 1. Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present parliament assembled, and by the authority of the same, that, from and after the first day of August one thousand seven hundred and seventy-four, so much of the charter granted by their majesties king William and queen Mary to the inhabitants of the said province of the Massachusetts bay in New England, and all and every clause, matter and thing therein contained which relates to the time and manner of electing the assistants or counsellors for the said province, be revoked, and is hereby revoked and made void and of none effect, and that the offices of all counsellors and assistants elected and appointed in pursuance thereof shall from thenceforth cease and determine; and that from and after the said first day of August one thousand seven hundred and seventy-four, the council or court of assistants of the said province for the time being shall be composed of such of the inhabitants or proprietors of lands within the same as shall be thereunto nominated and appointed by his majesty, his heirs and successors from time to time, by warrant under his or their signet or sign manual, and with the advice of the privy council, agreeable to the practice now used in respect to the appointment of counsellors in such of his majesty's other colonies in America, the governors whereof are appointed by commission under the great seal of Great Britain; provided, that the number of the said assistants or counsellors shall not at any one time exceed thirty-six, nor be less than twelve.

After August 1, 1774, the said letters patent to be void.

Council, how to be composed.

SECT. 2. And it is hereby further enacted, that the said assistants or counsellors so to be appointed as aforesaid shall hold their offices respectively, for and during the pleasure of his majesty, his heirs or successors, and shall have and enjoy all the powers, privileges and immunities at present held, exercised and enjoyed by the assistants or counsellors of the said province, constituted and elected from time to time under the said charter, except as hereinafter excepted, and shall also, upon their admission into the said council, and before they enter upon the execution of their offices respectively, take the oaths, and make, repeat and subscribe the declarations required as well by the said charter as by any law or laws of the said province now in force, to be taken by the assistants or counsellors who have been so elected and constituted as aforesaid.

Powers of the said counsellors.

SECT. 3. And be it further enacted by the authority aforesaid, that from and after the first day of July one thousand seven hundred and seventy-four, it shall and may be law-

The governor to appoint and remove judges, commissioners of oyer and terminer, &c.

ful for his majesty's governor for the time being of the said province, or in his absence for the lieutenant governor, to nominate and appoint, under the seal of the province, from time to time, and also to remove, without the consent of the council, all judges of the inferiour courts of common pleas, commissioners of oyer and terminer, the attorney general, provosts, marshals, justices of the peace, and other officers to the council or courts of justice belonging, and that all judges of the inferiour courts of common pleas, commissioners of oyer and terminer, the attorney general, provosts, marshals, justices, and other officers so appointed by the governor, or in his absence by the lieutenant governor alone, shall and may have, hold and exercise their said offices, powers and authorities as fully and completely, to all intents and purposes, as any judges of the inferiour courts of common pleas, commissioners of oyer and terminer, attorney general, provosts, marshals or other officers have or might have done heretofore under the said letters patent, in the third year of the reign of their late majesties king William and queen Mary, any law, statute or usage to the contrary notwithstanding.

Nothing herein contained to annul the commission granted before July, 1774.

SECT. 4. Provided always, and be it enacted, that nothing herein contained shall extend, or be construed to extend, to annul or make void the commission granted before the said first day of July one thousand seven hundred and seventy-four, to any judges of the inferiour courts of common pleas, commissioners of oyer and terminer, the attorney general, provosts, marshals, justices of the peace or other officers, but that they may hold and exercise the same as if this act had never been made, until the same shall be determined by death, removal by the governor, or other avoidance, as the case may happen.

Governor to appoint sheriffs without the consent of council.

SECT. 5. And be it further enacted by the authority aforesaid, that from and after the said first day of July, one thousand seven hundred and seventy-four, it shall and may be lawful for his majesty's governor, or in his absence for the lieutenant governor for the time being of the said province, from time to time to nominate and appoint the sheriffs without the consent of the council, and to remove such sheriffs with such consent, and not otherwise.

On a vacancy of the office of chief justice, &c. the governor may appoint the successors.

SECT. 6. And be it further enacted by the authority aforesaid, that upon every vacancy of the offices of chief justice and judges of the superiour court of the said province, from and after the said first day of July one thousand seven hundred and seventy-four, the governor for the time being, or in his absence the lieutenant governor, without the consent of the council, shall have full power and authority to nominate and appoint the persons to succeed to the said offices, who shall hold their commissions during the pleasure of his majesty, his heirs and successors, and that neither the chief

justice and judges appointed before the said first day of July one thousand seven hundred and seventy-four, nor those who shall hereafter be appointed pursuant to this act, shall be removed unless by the order of his majesty, his heirs or successors, under his or their sign manual.

And whereas, by several acts of the general court which have been from time to time enacted and passed within the said province, the freeholders and inhabitants of the several townships, districts and precincts, qualified as is therein expressed, are authorised to assemble together annually or occasionally, upon notice given, in such manner as the said acts direct, for the choice of selectmen, constables and other officers, and for the making and agreeing upon such necessary rules, orders and bylaws for the directing, managing and ordering the prudential affairs of such townships, districts and precincts, and for other purposes, and whereas a great abuse has been made of the power of calling such meetings, and the inhabitants have, contrary to the design of their institution, been misled to treat upon matters of the most general concern, and to pass many dangerous and unwarrantable resolves, for remedy whereof,

No meeting to be called without the consent of the governor.

SECT. 7. Be it enacted, that from and after the said first day of August one thousand seven hundred and seventy-four, no meeting shall be called by the selectmen, or at the request of any number of freeholders of any township, district or precinct, without the leave of the governor, or in his absence of the lieutenant governor, in writing, expressing the special business of the said meeting, first had and obtained, except the annual meeting in the months of March or May for the choice of selectmen, constables and other officers, or except for the choice of persons to fill up the offices aforesaid on the death or removal of any of the persons first elected to such offices, and also except any meeting for the election of a representative or representatives in the general court, and that no other matter shall be treated of at such meetings, except the election of the aforesaid officers or representatives, nor at any other meeting except the business expressed in the leave given by the governor, or in his absence by the lieutenant governor.

And whereas the method at present used in the province of Massachusetts bay in America, of electing persons to serve on grand juries and other juries by the freeholders and inhabitants of the several towns, affords occasion for many evil practices, and tends to pervert the free and impartial administration of justice, for remedy whereof,

Jurors to be summoned by the sheriffs only.

SECT. 8. Be it further enacted by the authority aforesaid, that from and after the respective times appointed for the holding of the general sessions of the peace in the several counties within the said province next after the month of September one thousand seven hundred and seventy-four,

the jurors to serve at the superiour courts of judicature, courts of assize, general gaol delivery, general sessions of the peace, and inferiour court of common pleas, in the several counties within the said province, shall not be elected, nominated, or appointed by the freeholders and inhabitants of the several towns within the said respective counties, nor summoned or returned by the constables of the said towns; but that from thenceforth the jurors to serve at the superiour courts of judicature, courts of assize, general gaol delivery, general sessions of the peace, and inferiour court of common pleas, within the said province, shall be summoned and returned by the sheriffs of the respective counties within the said province; and all writs of venire facias, or other process or warrants to be issued for the return of jurors to serve at the said courts shall be directed to the sheriffs of the said counties respectively, any law, custom or usage to the contrary notwithstanding.

When a sheriff shall be a party, writs for trial to be executed by the coroner.

SECT. 9. Provided always, and be it further enacted by the authority aforesaid, that wherever the sheriff of any county shall happen to be a party, or interested or related to any party or person interested in any prosecution or suit depending in any of the said courts, that then, in such case, the writ of venire facias, or other process or warrant for the summoning or return of a jury for the trial of such prosecution or suit, shall be directed to and executed by the coroner of such county; and in case such coroner shall be also a party, or interested in or related to any party or person interested in such prosecution or suit, then the venire facias, or other process or warrant for the summoning and return of a jury for the trial of such prosecution or suit shall be directed to and executed by a proper and indifferent person to be appointed for that purpose by the court wherein such prosecution or suit shall be depending.

Constables to deliver in lists to the justices of the names of persons within the respective towns;

SECT. 10. And that all sheriffs may be the better informed of persons qualified to serve on juries at the superiour courts of judicature, courts of assize, general gaol delivery, general sessions of the peace, and inferiour court of common pleas within the said province, be it further enacted by the authority aforesaid, that the constables of the respective towns, within the several counties of the said province, shall at the general sessions of the peace, to be holden for each county, next after the month of September in every year, upon the first day of the said sessions, return and deliver to the justices of the peace, in open court, a true list, in writing, of the names and places of abode of all persons within the respective towns for which they serve, or the districts thereof, qualified to serve upon juries, with their titles and additions, between the age of one-and-twenty years and the age of seventy years, which said justices, or any two of them, at the said sessions in the respective coun-

ties, shall cause to be delivered a duplicate of the aforesaid lists, by the clerk of the peace of every county, to the sheriffs or their deputies, within ten days after such sessions, and cause each of the said lists to be fairly entered into a book, by the clerk of the peace, to be by him provided, and kept for that purpose amongst the records of the said court; and no sheriff shall empannel or return any person or persons to serve upon any grand jury, or petit jury, whatsoever, in any of the said courts that shall not be named or mentioned in such list; and, to prevent a failure of justice, through the neglect of constables to make such returns of persons qualified to serve on juries, as in and by this act is directed, the clerks of the peace of the said several counties are hereby required and commanded, twenty days at least next before the month of September, yearly, and every year, to issue forth precepts or warrants, under their respective hands and seals, to the respective constables of the several towns within the said respective counties, requiring them, and every of them, to make such return of persons qualified to serve upon juries as hereby respectively directed; and every constable failing at any time to make and deliver such return to the justices in open court, as aforesaid, shall forfeit, and incur the penalty of five pounds sterling to his majesty and his successors, to be recovered by bill, plaint, or information, to be prosecuted in any of the courts aforesaid; and in order that the constables may be the better enabled to make complete lists of all persons qualified to serve on juries, the constables of the several towns shall have free liberty at all seasonable times, upon request by them made to any officer or officers who shall have in his or their custody any book or account of rates or taxes on the freeholders or inhabitants within such respective towns, to inspect the same, and take from thence the names of such persons qualified to serve on juries, dwelling within the respective towns for which such lists are to be given in and returned pursuant to this act, and shall, in the month of September yearly, and every year, upon two or more Sundays, fix upon the door of the church, chapel, and every other publick place of religious worship within their respective precincts, a true and exact list of all such persons intended to be returned to the said general sessions of the peace, as qualified to serve on juries, pursuant to the directions of this act, and leave at the same time a duplicate of such list with the town clerk of the said place, to be perused by the freeholders and inhabitants thereof, to the end that notice may be given of persons duly qualified who are omitted, or of persons inserted by mistake who ought to be omitted out of such lists; and it shall and may be lawful to and for the justices, at the general sessions of the peace to which the said lists shall be so returned, upon due proof

which are to be entered in books by the clerks.

Penalty of 5l. if constables fail to deliver lists.

made before them of any person or persons duly qualified to serve on juries being omitted in such lists, or of any person or persons being inserted therein who ought to have been omitted, to order his or their name or names to be inserted or struck out, as the case may require; and in case any constable shall wilfully omit, out of such list, any person or persons, whose name or names ought to be inserted, or shall wilfully insert any person or persons who ought to be omitted, every constable so offending, shall, for every person so omitted or inserted in such list, contrary to the true intent and meaning of this act, be fined by the said justices, in the said general sessions of the peace, in the sum of forty shillings sterling.

Penalty of 40s if the constable wilfully deliver in wrong lists.

Sect. 11. Provided always, and be it enacted by the authority aforesaid, that in case default shall at any time hereafter be made, by any constable or constables, to return lists of persons qualified to serve on juries within any of the said towns to the said court of general sessions of the peace, then, and in such case, it shall and may be lawful for the sheriff of the county, in which such default shall be made, to summon and return to the several courts aforesaid, or any of them, such and so many persons dwelling in such towns, or the districts thereof, qualified to serve on juries, as he shall think fit to serve on juries at such respective courts; any thing herein contained to the contrary thereof in any wise notwithstanding.

In default of lists by the constable, sheriffs to summon persons qualified.

Sect. 12. And be it further enacted by the authority aforesaid, that every summons of any person to serve upon any of the juries at the said courts, or any of them, shall be made by the sheriff, or other person, ten days at the least before the holding of every such court; and in case any jurors, so to be summoned, be absent from the usual place of his habitation at the time of such summons, notice of such summons shall be given, by leaving a note, in writing, under the hand of such sheriff, or person, containing the contents thereof, at the dwelling house of such juror, with some person inhabiting in the same.

Every summons to be issued ten days before the holding of the court, &c.

Sect. 13. Provided always, and be it further enacted by the authority aforesaid, that in case a sufficient number of persons qualified to serve on juries shall not appear at the said courts or any of them, to perform the service of grand or petit jurors, that then, and in such case, it shall be lawful for the said court to issue a writ or precept to the sheriff, requiring him to summon a sufficient number of other persons qualified to serve on juries, immediately to appear at such court, to fill up and complete the number of jurors to serve at such court; and such persons are hereby required to appear and serve as jurors at the said courts accordingly.

In case a sufficient number of jurors shall not attend, the court to issue a precept for such jurors.

Sect. 14. And be it further enacted by the authority aforesaid, that no person who shall serve as a juror, at any

No juror to serve

of the said courts, shall be liable to serve again as a juror at the same court, or any other of the courts aforesaid, for the space of three years then next following, except upon special juror. twice in three years.

SECT. 15. And, in order that sheriffs may be informed of the persons who have served as jurors, it is hereby further enacted by the authority aforesaid, that every sheriff shall prepare and keep a book, or register, wherein the names of all such persons who have served as jurors, with their additions and places of abode, and the times when, and the courts in which they served, shall be alphabetically entered and registered, which books or registers shall, from time to time, be delivered over to the succeeding sheriff of the said county, within ten days after he shall enter upon his office; and every juror, who shall attend and serve at any of the courts aforesaid, may, at the expiration of the time of holding every such court, upon application to the sheriff or his deputy, have a certificate immediately, gratis, from the sheriff or his deputy, testifying such his attendance and service, which said certificate the said sheriff, or his deputy, is required to give to every such juror. How sheriffs are to be informed of those who have served as jurors.

SECT. 16. And be it further enacted by the authority aforesaid, that if, by reason of challenges or otherwise, there shall not be a sufficient number of jurors for the trial of any prosecution for any misdemeanour, or any action depending in any of the said courts, then, and in such case the jury shall be filled up de talibus circumstantibus, to be returned by the sheriff, unless he be a party, or interested or related to any party or person interested in such prosecution or action; and, in any of which cases, to be returned by the coroner, unless he be a party, or interested or related to any party or person interested in such prosecution or action; and, in any of these cases, to be returned by a proper and indifferent person, to be appointed by the court for that purpose, How a sufficient number of jurors is to be constituted.

SECT. 17. And be it further enacted by the authority aforesaid, that in case any person summoned to serve upon the grand or petit jury, at any of the courts aforesaid, or upon the jury in any prosecution, action, or suit, depending in any of the said courts, shall not appear and serve at the said courts, according to the said summons, not having any reasonable excuse to be allowed by the judges or justices at such court, he shall be fined by the judges or justices of such court in any sum not exceeding the sum of ten pounds, nor less than twenty shillings sterling. Penalty should persons not appear to serve on grand or petit juries.

SECT. 18. And be it further enacted by the authority aforesaid, that every sheriff, or other officer, to whom the venire facias, or other process or warrant, for the trial of causes, or summoning of juries, shall be directed, shall, upon his return of every such writ, or other process or warrant, unless in cases where a special jury shall be struck Number of jurors, how to be ascertained.

by order or rule of court, pursuant to this act, annex a panel to the said writ or process, or warrant, containing the christian and surnames, additions, and places of abode, of a competent number of jurors named in such lists, which number of jurors shall not be less than twenty-four, nor more than forty-eight, without direction of the judges or justices of such court or session, or one of them, who are hereby respectively empowered and required, if he or they see cause, by order, under his or their respective hand or hands, to direct a greater number; and then such number as shall be so directed shall be the number to be returned to serve on such jury.

Names of the jury, how to be drawn.

SECT. 19. And be it further enacted by the authority aforesaid, that for the trials of all actions or suits depending in any of the said courts, the name of each and every person who shall be summoned and returned as aforesaid, with his addition, and the place of his abode, shall be written in several and distinct pieces of parchment, or paper, being all as near as may be of equal size and bigness, and shall be delivered unto the officer to be appointed by the court for that purpose, by the sheriff, under-sheriff, or some agent of his; and shall, by direction and care of such officer, be rolled up all, as near as may be, in the same manner, and put together in a box or glass, to be provided for that purpose; and when any cause shall be brought on to be tried, some indifferent person, by direction of the court, may and shall, in open court, draw out twelve of the said parchments or papers, one after another; and if any of the persons, whose names shall be so drawn, shall not appear, or shall be challenged, and such challenge allowed, then such person shall proceed to draw other parchments or papers from the said box, till twelve indifferent persons shall be drawn, which twelve indifferent persons being sworn shall be the jury to try the said cause; and the names of the persons so drawn and sworn shall be kept apart by themselves in some other box or glass, to be kept for that purpose, till such jury shall have given in their verdict, and the same is recorded, or until such jury shall, by consent of the parties, or leave of the court, be discharged; and then the same names shall be rolled up again, and returned to the former box or glass, there to be kept, with the other names remaining at that time undrawn, and so toties quoties, as long as any cause remains then to be tried.

When the superiour court of assize, and common pleas may appoint a jury.

SECT. 20. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the superiour court of assize, and court of common pleas, upon motion made on behalf of his majesty, his heirs or successors, or on the motion of any prosecutor or defendant, in any indictment or information for any misdemeanour depending, or to be brought or prosecuted in the said court, or on the motion of any plaintiff or plaintiffs, defendant or de-

fendants, in any action, cause or suit whatsoever, depending, or to be brought and carried on in the said court, and the said court is hereby authorised and required, upon motion as aforesaid, in any of the cases before mentioned, to order and appoint a jury to be struck for the trial of any issue joined in any of the said cases, and triable by a jury of twelve men, by such officer of the said court as the court shall appoint; and for that purpose the sheriff, or his deputy, shall attend such officer with the duplicate of the lists of persons qualified to serve on juries; and such officer shall thereupon take down, in writing, from the said duplicate, the names of forty-eight persons qualified to serve on juries, with their additions, and places of abode, a copy whereof shall forthwith be delivered to the prosecutors or plaintiffs, their attorneys or agents, and another copy thereof to the defendants, their attorneys or agents, in such prosecutions and causes; and the said officer of the court aforesaid shall, at a time to be fixed by him for that purpose, strike out the names of twelve of the said persons, at the nomination of the prosecutors or plaintiffs, their attorneys or agents, and also the names of twelve others of the said persons, at the nomination of the said defendants in such prosecutions and suits, and the twenty-four remaining persons shall be struck and summoned, and returned to the said court as jurors, for the trial of such issues.

Provided always, that in case the prosecutors or plaintiffs or defendants, their attorneys or agents, shall neglect or refuse to attend the officer at the time fixed for striking the names of twenty-four persons as aforesaid, or nominate the persons to be struck out, then and in such case the said officer shall, and he is hereby required to strike out the names of such number of the said persons as such prosecutors or plaintiffs, or defendants might have nominated to be struck out. Proviso.

Sect. 21. And be it further enacted, that the person or party who shall apply for such special jury as aforesaid shall not only bear and pay the fees for striking such jury, but shall also pay and discharge all the expenses occasioned by the trial of the cause by such special jury, and shall not have any further or other allowance for the same upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury, unless the judge before whom the cause is tried shall, immediately after the trial, certify in open court, under his hand, upon the back of the record, that the same was a cause proper to be tried by a special jury. Persons applying for special juries to defray fees and expenses.

Sect. 22. And be it further enacted by the authority aforesaid, that in all actions brought in any of the said courts, where it shall appear to the court in which such actions are depending, that it will be proper and necessary that Costs, how to be defrayed in actions brought.

the jurors who are to try the issues in any such actions, should have the view of the messuages, lands, or place in question, in order to their better understanding the evidence that will be given upon the trial of such issues, in every such case the respective courts in which such actions shall be depending may order the jury to the place in question, who then and there shall have the matters in question shewn them by two persons to be appointed by the court; and the special costs of all such views as allowed by the court shall, before the trial, be paid by the party who moved for the view, the adverse party not consenting thereto, and shall at the taxation of the bill of costs have the same allowed him, upon his recovering judgment in such trial, and upon all views with the consent of parties ordered by the court, the costs thereof as allowed by the court shall, before trial, be equally paid by the said parties, and in the taxation of the bill of costs, the party recovering judgment shall have the sum by him paid allowed to him; any law, usage or custom to the contrary notwithstanding.

Sheriffs may plead the general issue.

SECT. 23. And be it further enacted by the authority aforesaid, that if any action shall be brought against any sheriff for what he shall do in execution or by virtue of this act, he may plead the general issue, and give the special matter in evidence, and if a verdict shall be found for him, he shall recover treble costs. [1774.]

CHAPTER XL.

AN ACT DECLARATORY OF THE RIGHT OF CERTAIN TOWNS AND DISTRICTS IN THE COLONY OF THE MASSACHUSETTS BAY IN NEW ENGLAND TO ELECT AND DEPUTE A REPRESENTATIVE OR REPRESENTATIVES TO SERVE FOR AND REPRESENT THEM IN ANY GREAT AND GENERAL COURT OR ASSEMBLY, AT ANY TIME TO BE HELD AND KEPT FOR THE SERVICE OF THE SAID COLONY.

WHEREAS there are divers acts or laws heretofore made and passed by former general courts or assemblies of this colony for the incorporation of towns and districts, which against common right, and in derogation of the rights granted to the inhabitants of this colony by the charter, contain an exception of the right and privilege of choosing and send-

ing a representative to the great and general court or assembly,

Every town containing 30 freeholders shall have a right to send a representative.

SECT. 1. Be it therefore enacted and declared by the council and house of representatives in general court assembled, and by the authority of the same, that henceforth every such exception contained in any act or law heretofore made and passed by any general court or assembly of this colony, for the erecting or incorporating any town or district, shall be held and taken to be altogether null and void; and that every town and district in this colony, consisting of the number of thirty or more freeholders and other inhabitants qualified by charter to vote in the election of a representative, shall henceforth be held and taken to have full right, power and privilege to elect and depute one or more persons, being freeholders and resident in such town or district, to serve for and represent them in any great and general court or assembly hereafter to be held and kept for this colony, according to the limitations in an act or law of the general assembly, entitled an act for ascertaining the number and regulating the house of representatives, any exception of that right and privilege contained or expressed in the respective acts or laws for the incorporation of such town or district notwithstanding.

And whereas in and by an act or law of this colony, entitled an act for erecting part of the town of Newbury into a new town by the name of Newburyport, it is enacted and provided that the said town of Newburyport should have the right of choosing and sending from time to time but one person to represent them in the great and general court of this colony, and that the inhabitants of the town of Newbury, from and after the time of the making and passing the said act, should have a right to choose and send no more than one person to represent them in the great and general court of this colony,

Towns of Newbury and Newburyport to have the same right.

SECT. 2. Be it enacted and declared by the authority aforesaid, that henceforth each of the said towns of Newbury and Newburyport shall have the full power and right of choosing and sending as many persons to represent them respectively in the great and general court or assembly of this colony as each of the said towns would have had a right to have chosen and sent to the said general court by virtue of the abovementioned act or law, entitled an act for ascertaining the number and regulating the house of representatives, in case there had not been any restrictions upon the said towns touching their rights and privilege of choosing and sending persons to represent them respectively in the great and general court or assembly, contained or expressed in the said act for the constituting and making that part of the former town of Newbury now called Newburyport a distinct town.

Districts made towns.

SECT. 3. And be it further enacted and declared by the authority aforesaid, that every corporate body in this colony which in the act for the incorporation thereof is said and declared to be made a district, and has by such act granted to it, or is declared to be vested with the rights, powers, privileges or immunities of a town with the exception abovementioned, of choosing and sending a representative to the great and general court or assembly, shall henceforth be and shall be holden, taken and intended to be a town to all intents and purposes whatsoever. [July, 1775.]

CHAPTER XLI.

AN ACT FOR ESTABLISHING THE STYLE OF COMMISSIONS WHICH SHALL HEREAFTER BE ISSUED, AND FOR ALTERING THE STYLE OF WRITS, PROCESSES AND ALL LAW PROCEEDINGS WITHIN THIS COLONY, AND FOR DIRECTING HOW RECOGNIZANCES TO THE USE OF THIS GOVERNMENT SHALL FOR THE FUTURE BE TAKEN AND PROSECUTED.

WHEREAS the petitions of the united colonies to George the third, king of Great Britain, for the redress of great and manifest grievances have not only been rejected, but treated with scorn and contempt, and their opposition to designs evidently formed to reduce them to a state of servile subjection, and their necessary defence against hostile forces actually employed to subdue them have been declared rebellion, and whereas an unjust war has been commenced against them, which the commanders of British fleets and armies have prosecuted and still continue to prosecute with their utmost vigour in cruel manners, and have directed their vengeance principally against this colony, wasting, spoiling and destroying the country, burning houses and defenceless towns, and exposing the helpless inhabitants to every misery, by which inhuman and barbarous treatment, by the commandment of George the third, king of Great Britain, &c. the people of this colony consider themselves greatly injured, and have been obliged to have recourse to arms to repel such injuries, and whereas under such circumstances the absurdity of issuing commissions, writs, processes and other proceedings in law and in the courts of justice within this colony in the name and style of the king of Great Britain is very apparent, and the tendency it has to keep up

ideas inconsistent with the safety of this government, has given the good people of this colony great uneasiness,

Style of civil commissions, &c.

SECT. 1. Be it therefore enacted by the council and house of representatives in general court assembled, and by the authority of the same, that all civil commissions, writs and precepts for convening the general court or assembly, which shall hereafter be made out in this colony, shall be in the style and name of the government and people of the Massachusetts bay in New England; and all commissions both civil and military shall be dated in the year of the Christian era, and shall not bear the date of the year of the reign of any king or queen of Great Britain.

Their dates.

The regal style expunged June 1st, 1776.

And that all writs, processes and proceedings in law, and in any of the courts of justice in this colony, which have been used or accustomed, or by any of the laws of this colony are required to be issued, used or practised in law, and in any of the courts of justice in this colony, in the name and style of the king of Great Britain, France and Ireland, defender of the faith, &c. or in any other words implying or intending the same, shall, from and after the first day of June one thousand seven hundred and seventy-six, be made, issued, used and practised in the name and style of the government and people of the Massachusetts bay in New England, and no other; and shall bear the date of the year of the Christian era, and shall not bear the date of the year of the reign of any king or queen of Great Britain, until some accommodation of the American congress, or act, order or resolve of a general American legislature, or of the legislature of this colony, shall be made and passed otherwise directing and prescribing.

Commissions issued to be in force till the 19th of Sept. 1776.

SECT. 2. And be it enacted, that all commissions civil and military which have been issued by the major part of the council of this colony since the nineteenth day of September one thousand seven hundred and seventy-five, shall have the same force and effect as if this act had not been made, the style and date therein notwithstanding, until the nineteenth day of September one thousand seven hundred and seventy-six, and no longer.

Council empowered to alter the style of commissions.

Provided nevertheless, that when any such commissions shall be brought to the council of this colony to be made conformable to the style and date by this act required for issuing commissions hereafter, the council are hereby empowered and directed to cause the same to be done.

New style, when to begin.

SECT. 3. And be it further enacted, that all recognizances that heretofore have been used and accustomed to be taken to the king of Great Britain, by the style and title of our sovereign lord the king, shall, from and after the first day of June one thousand seven hundred and seventy-six, be taken to the government and people of the Massachusetts bay in New England; and when a scire facias or other legal process

shall be issued thereon against the recognizor or recognizors, they shall be in the name and behalf of the said government and people, and when judgment shall be rendered thereon, the money recovered and levied shall be paid into the treasury of this colony for the use of the same.

Former suits, how to be issued.

SECT. 4. And be it further enacted, that all suits upon recognizances which have been heretofore taken within this colony to the king of Great Britain, under any name, character or form of words whatsoever, that have been or that may be hereafter forfeited, if any suits should be brought thereon, shall, from and after the said first day of June be commenced and prosecuted in the name and behalf of the government and people of the Massachusetts bay in New England, and not in the name of the said king; and the money recovered and levied on such suits shall be likewise paid into the treasury of this colony for the use and benefit of the said people. [May, 1776.]

CHAPTER XLII.

AN ACT IN ADDITION TO AN ACT MADE IN THE LAST SESSION OF THE GENERAL ASSEMBLY, ENTITLED AN ACT FOR ALTERING THE STYLE OF WRITS, PROCESSES AND ALL LAW PROCEEDINGS WITHIN THIS COLONY, AND FOR DIRECTING HOW RECOGNIZANCES TO THE USE OF THE GOVERNMENT SHALL FOR THE FUTURE BE TAKEN AND PROSECUTED.

WHEREAS in and by said act no provision is made to enable the council of this colony of Massachusetts Bay to make conformable to the style and date by the said act required any commissions, issued by the major part of the council of the said colony before the nineteenth day of September one thousand seven hundred and seventy-five,

Council empowered to alter the style and date of commissions.

SECT. 1. Be it therefore enacted by the council and house of representatives in general court assembled, and by the authority of the same, that the council of the said colony are hereby as fully authorised and empowered at any time before the nineteenth day of September one thousand seven hundred and seventy-six, to make conformable to the style and date by the said act required, commissions civil and military, that were issued by the major part of the said council at any time in the month of August or in the month of September one thousand seven hundred and seventy-five, as

well as such as were issued on and after the said nineteenth day of September one thousand seven hundred and seventy-five, and before the passing said act.

Commissions not altered before 19th Sept. 1776, to be void and of no effect.

SECT. 2. And be it further enacted by the authority aforesaid, that all commissions civil or military issued by the major part of the said council in the months of August or September one thousand seven hundred and seventy-five, and shall not by the major part of the said council before the nineteenth day of September one thousand seven hundred and seventy-six be made conformable to the style and date in the said act required, shall, from and after the nineteenth day of September one thousand seven hundred and seventy-six, become void and of no effect. [May, 1776.]

CHAPTER XLIII.

AN ACT FOR PROVIDING A REINFORCEMENT TO THE AMERICAN ARMY.

WHEREAS the state of our publick affairs claims our most serious attention, and while our inveterate enemies are using their utmost efforts to subjugate us not only to an arbitrary but ignominious government, in which our taskmasters may be those tools of power whom no laws could deter from the most flagitious crimes, and who have been ready at all times to sacrifice their country to their own emolument, it obviously becomes the duty of this assembly to make every possible provision against so great a calamity,

And whereas the time for which a part of the militia of this state is engaged to serve as a reinforcement to the continental army is near expiring, and it is apprehended that another reinforcement may be necessary, when a movement of the whole militia would be both needless and impracticable, this court in faithfulness to this state has therefore thought proper to point out and establish the following method for determining what persons shall hold themselves in readiness to march first on this occasion,

No person to be exempted from serving, except.

SECT. 1. And it is enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that no rank or station in life, place, employment or office, except as is hereafter excepted, shall excuse or exempt any person from serving in arms for the defence of his country, either by himself or some able bodied

effective man in his stead, or in case of his neglect or refusal, from paying the fine herein after required.

Exceptions.

Provided nevertheless, that those persons who had before the nineteenth day of April one thousand seven hundred and seventy-five been by law deemed to be of the denomination of Christians called quakers, settled ministers of the gospel, the president, professors, tutors, librarian and under graduates of Harvard college, Indians, negroes and mulattoes, shall not be held to take up arms or procure any person to do it in their room; and also that four men to each of the powder mills in Stoughton and Andover be in like manner exempted.

One fourth part of the militia to be raised.

SECT. 2. And be it further enacted by the authority aforesaid, that one quarter part of all the able bodied male persons within this state, and not in actual military service and pay for the defence of this or the American States, from sixteen years of age and upwards, excepting as aforesaid, and excepting the inhabitants of all such places as lie to the eastward of Camden, so called, in the county of Lincoln, shall either by voluntary enlistment, lot or draught, as is hereinafter provided, be appointed and held in readiness,

Their equipment to serve for three months from their marching from home.

armed and equipped with a good gun and bayonet, or in the room of a bayonet with a tomahawk, cutting sword or hatchet, also with a cartridge box, a blanket and knapsack, to march at a minute's warning, to serve for a term not exceeding three months from the time of their march from home, within and for the defence of any of the United States, when they shall be called out to reinforce the continental army by the general court, or in the recess thereof by the council, and under the command of such general officer or officers as the general court, or in its recess the council, shall appoint; and that the commissioned officers of the militia in each town in this state shall immediately upon their receiving this act cause all the male persons usually residing therein, from sixteen years of age and upwards, except those herein before excepted, and where there are no such officers in any town the selectmen thereof shall cause them to be mustered, and said militia officers, where

Selectmen to cause them to be marched.

there are such, in conjunction with the selectmen and committees of correspondence, &c. of such towns, shall by voluntary enlistment, lot or draught, as to them or the major part of them shall appear equitable and just, cause one quarter part of all said male persons, not excepting themselves or any other persons but such as are herein before exempted, in this state and not in actual military service and pay for the defence of this or the American states, to be appointed and held in readiness and equipped as aforesaid, to serve as is above provided, having regard to services already done and performed.

And the military officers, with the selectmen and committees as aforesaid, shall immediately make out a fair list of the names of the persons so appointed, either by enlistment, lot or draught, and deliver the same as soon as may be to the brigadier of the county to which they belong, or in his absence to the next commanding officer in the brigade then in the county, who shall, as soon as such list is delivered to him, with the advice of the field officers of such brigade, form that part of the militia which shall be so appointed as aforesaid within his county, into companies as near as may be of the number of sixty-eight men including non-commissioned officers to a company, and shall appoint of the militia officers of such brigade proper officers to lead them, according to the rank such officers now hold, and shall form such companies into battalions, appointing proper field officers of the standing militia to command them, according to the rank such officers now hold in the militia, making as near as may be ten companies to a battalion, and make return to the council of the number of men and the names of the officers and their several ranks, who may be drafted, enlisted or appointed in consequence of this act, as soon as the same can possibly by them be ascertained.

Military officers, selectmen, &c. to make out a list of the names of persons appointed for the brigadiers of the county to which they belong.

And to make return to the council of the number of men so draughted.

Sect 3. And it is further enacted, that when the said persons so appointed are ordered to march, the selectmen of each town shall procure, by impressment or otherwise, necessary teams and waggons to carry their baggage, and shall also pay each officer and soldier two pence per mile for every mile's travel from their several places of abode to the place or places of their destination, as appointed by the general court, or in the recess thereof by the council, and also provide for them sufficient kettles, bottles or canteens, and shall lay their accounts thereof before the general court, with proper receipts for allowance and payment.

Selectmen to procure teams to carry baggage and pay the soldiers' travel.

And in order to enable the selectmen to perform and observe the preceding clause, in case they cannot otherwise procure the money needed for the purposes aforesaid,

Sect. 4. It is enacted, that they shall, as soon as the said quarter part of the male persons within their respective towns are appointed as aforesaid return an account of the numbers so appointed to the council, who shall make out their warrant in favour of such selectmen upon the treasury of this state, for a sum sufficient to enable such selectmen to pay the persons so appointed their mileage, from the places of their abode to the place of their destination, and also for a sum sufficient to enable such selectmen to procure teams and waggons to carry their baggage, allowing one team to each company of men; the said selectmen to be accountable to the general court for the sums they shall respectively receive.

Selectmen enabled to pay mileage and teamage.

To be accountable.

Establishment for officers and men.

SECT. 5. And it is further enacted, that the persons so appointed, after they are ordered to march, shall be under the same regulations as are provided for the continental army, and receive wages for every calendar month according to the following establishment, viz. a colonel fifteen pounds, lieutenant colonel twelve pounds, a major ten pounds, a captain eight pounds, a first lieutenant five pounds eight shillings, a second lieutenant five pounds eight shillings, a chaplain seven pounds ten shillings, surgeon seven pounds ten shillings, surgeon's mate four pounds, adjutant five pounds ten shillings, quartermaster three pounds ten shillings, sergeant three pounds eight shillings, corporal three pounds four shillings, drummer or fifer three pounds four shillings, privates three pounds; said wages to commence from the time of their marching and to continue to the time of their return, allowing twenty miles march to a day.

Empowering the selectmen and committees of correspondence to muster the men.

SECT. 6. And be it further enacted by the authority aforesaid, that in each town or place where there shall have been a neglect in the appointment of one of those orders, viz. of military officers, selectmen, or committees of correspondence, or of any two of those orders, such and so many of them as shall be in any town or place shall have all the power with respect to mustering and appointing the men as aforesaid, as the military officers, committees and selectmen jointly have, and shall be held in such case respectively to execute this act under the same penalty as is herein provided against them in case of the joint neglect of them all.

To empower the selectmen to impress arms.

And the selectmen of each town are also empowered and directed to impress arms for such persons as shall be appointed as aforesaid, and are unable to procure them for themselves, and shall truly appraise the arms so impressed, and give the person or persons from whom they are taken a receipt therefor; and said receipt shall express and certify the sum such arms are appraised at, to the intent that the owner or owners may, if they please, receive pay for them out of the treasury of this state by warrant from the council; but if the owners of such arms shall choose to have a return thereof, after the person for whose use such arms were taken shall return from the campaign, they shall be entitled to receive for the hire of each gun the sum of four shillings; and in case of such arms being lost, the owners shall be paid therefor according to the appraisement of the same, deducting any sum that may have been paid for the hire thereof; and if any soldier to whose use such arms are impressed shall wilfully dispose of, or negligently lose them, he shall have the sum such arms are appraised at deducted from his wages; and the treasurer shall not pay any non-commissioned officer or soldier his wages for his service until he shall produce a certificate from the selectmen of the town, or committee of correspondence, &c. of any place

not incorporated, expressing either that he found his own arms, or that the arms delivered him by such selectmen have been returned by him, or were unavoidably lost.

Penalty for military officers refusing to do their duty.

SECT. 7. And it is further enacted, that if any military officer, not having reasonable excuse, shall refuse or neglect strictly to perform the duties enjoined on him by this act, he shall pay a fine of twelve pounds, and be reduced to the ranks in the militia; and that if any selectman or committee man shall refuse or neglect to perform the duties enjoined on him by this act, he shall forfeit and pay the sum of twelve pounds, to be recovered by any person who shall prosecute for the same, by action of debt in any court proper to try the same; one half of said fine to be for the use of said prosecutor, the other half to be lodged in the hands of the treasurer of the town or place where such offender lives, to be drawn out by the selectmen for the use of hiring or procuring men to serve for the defence of this, or the United States of America.

To be paid into the hands of the treasurer of the town where such offender resides.

Soldier refusing to march.

SECT. 8. And it is further enacted, that if any person appointed as aforesaid, and being in person notified of such appointment, or by writing left at his place of abode, signed by any of them who have appointed him, shall refuse or neglect in twenty-four hours thereafter to make a reasonable excuse to the acceptance of said persons by whom he is so appointed, or to pay into their hands the sum of ten pounds, he shall be held, and taken to be a soldier in the service for which he was so appointed. And if any such soldier neglect or refuse to march as aforesaid, when called out, according to the mode prescribed in the militia act, unless he produces a discharge from, or provides some able bodied man in his stead, to the acceptance of the persons herein empowered to appoint him, he shall forfeit and pay into the hand of such persons the sum of twelve pounds, or in default of such payment, the said persons are hereby empowered and directed to commit such delinquent forthwith, until he pay said fine, to the common gaol of the county, by mittimus of the tenor and form following, directed to such officer as is empowered to execute a warrant from a justice of the peace.

Penalty.

Suffolk, ss. To and to the keeper of the common gaol of the county of Greeting.

Warrant for commitment.

Whereas C. D. of the town of was by us the subscribers appointed a soldier according to the directions of a late act of this government for providing a reinforcement to the American army, has been duly notified of such appointment, and did not, within twenty-four hours after such notification, pay to us the sum of ten pounds, nor make any reasonable excuse; and the said C. D. was on the day of called out according to law to march, but neglected so to do, or to provide any person in his stead; you the said are therefore hereby required forth-

with to apprehend the said C. D. and him commit to the common gaol in said county; and you the said keeper of the said gaol, are alike required to receive the said C. D. into your custody, there to remain until he pay the fine of twelve pounds, as ordered in said act, together with charges of commitment and imprisonment, or be discharged by order of law. Hereof fail not.

Given under our hands and seal, this day of

Fines to be paid to treasurer of the town.

SECT. 9. And it is further enacted, that all fines incurred by breaches of the foregoing paragraph shall be paid over, by the persons who may first receive the same, to the treasurer of the town or place, to be employed by the selectmen in hiring persons for the service herein directed, as there shall be occasion; provided always, that so far as the quota of said town or place is not immediately completed by persons hired by such fines, the persons herein empowered to raise such quota shall go on without delay to appoint as aforesaid, till the full complement of such town or place is made up; and in case any surplusage shall remain of forfeitures, after the number of men intended to be levied in consequence of this act shall in fact be levied, the same shall be paid over to the treasurer or receiver of each town respectively, there to remain for the disposal of such town, for raising men for future military service.

Field officers to appoint a chaplain, &c.

SECT. 10. And it is also enacted, that the major part of the field officers of each battalion so appointed shall have the privilege of appointing one chaplain, one surgeon, one surgeon's mate, a quarter-master, and an adjutant for such battalion.

Major part of them to empower the selectmen and committees of any town to perform the same duties as required to be done by military officers.

SECT. 11. And it is further enacted, that wherever this act requires any duty to be done by the military officers, selectmen and committees of any town or place, it is to be understood, that the major part of them, or of such orders of them as are found subsisting in the said town or place, be, and they hereby are empowered to perform the same duties, no less than if the whole number of all said orders were personally present and agreeing; provided, that if the persons so appointed as aforesaid shall not be called out to reinforce the continental army, upon or before the first day of March next, they shall not be held to march after that time, until there is a new appointment, or some further order from the general court; but if they should be called out upon or before the said first day of March for the purpose aforesaid, they shall be held to stay in the service for the space of three months, from the time of their marching, if it should be found necessary; provided also, that nothing in this act shall be construed to exempt said persons who are so appointed to reinforce the continental army, and who are now a part of the militia of this state, from being considered to belong to said militia, or to excuse, or exempt

Soldiers be held to stay three months from the time of marching.

them from being obliged to march for any other purpose in defence of this or the other states of America, according to the modes prescribed by the laws of this state, made and provided for the regulation of the militia therein.

The council empowered in the recess of the general court to call out so many of the battalions formed as shall appear to be necessary upon any emergency.

SECT. 12. And it is further provided and enacted, that if any part of said persons so appointed, and not the whole of them should be needed for the purpose and service aforesaid, upon any emergency in the recess of the general court, the council shall be, and hereby are fully empowered to call out such and so many of the battalions formed as aforesaid, as shall appear to the said council to be necessary, and that each battalion of said quarter part, shall be held to serve three months from the time of their marching respectively, and that the marching of some of the battalions shall not be construed a release of the residue that shall be formed in consequence of this act, from the duties herein required.

SECT. 13. And it is enacted by the authority aforesaid, that this act shall be held to be in full force; any law of this state to the contrary notwithstanding. [May, 1776.]

CHAPTER XLIV.

AN ACT TO PREVENT THE WASTE, DESTRUCTION AND EMBEZZLEMENT OF THE GOODS OR ESTATES OF SUCH PERSONS WHO HAVE LEFT THE SAME, AND FLED TO OUR ENEMIES FOR PROTECTION, AND ALSO FOR PAYMENT OF THEIR JUST DEBTS OUT OF THEIR ESTATES.

WHEREAS divers persons, having estates real and personal within this state, have left the same, and fled to our enemies for protection, and notwithstanding the provision already made by this court for the preservation of such estates, yet there is danger of waste, and embezzlement thereof, whereby creditors of such persons may be disappointed in obtaining their equitable demands, or some creditors may obtain their full demands to the exclusion of others, for prevention whereof,

Persons voluntarily going to the enemy leaving an estate of 20l or more within this state.

SECT. 1. Be it enacted by the council and house of representatives in general court assembled, and by the authority of the same, that when it shall appear to the judge of probate for any county in this state, by a certificate under the hands of the major part of the selectmen or committee of correspondence, safety and inspection of any town within the county where such judge resides, that any person, being an inhabitant of their town, has absented him or herself for the term of

three months or upwards, leaving estate real or personal behind him or her to the value of twenty pounds or more, within this state, and that they, the said selectmen or committee of correspondence, &c. from the best intelligence that they can obtain, verily believe such absent person voluntarily went to our enemies, and is still absent from his or her habitation or usual place of abode and without this state, the said judge hereby is authorised and empowered to nominate and appoint some discreet person to be agent for the estate of such absentee, preference in such appointment to be given to a principal creditor, not being a relation, in case he inclines to be agent; and such agent, after giving bond with sureties to the judge, shall have full power and authority to demand and receive, enter into and take possession of all the goods and estate of every kind left by the person to whose estate he is appointed agent, or which shall be found in this state; and the said agent in his capacity aforesaid is hereby authorised to prosecute and sue for the same, in as full and ample a manner as though the absent person was natually dead, and the said agent was appointed administrator of his or her estate; and the said agent within three months, or sooner, from the time of his appointment, shall return an inventory upon oath, of such absentee's estate that has come to his hands to the said judge of probate, and in case any other estate shall appear after returning the said inventory, he shall return an additional one; persons to be appointed and sworn for the appraisement thereof in the same manner they now are upon the estates of deceased persons; and the said agent shall sell and dispose of the whole of the personal estate of said absentee, except as hereafter mentioned, at publick auction for the most the same will fetch, the agent giving publick notice thereof ten days at least before the sale, and the said agent is hereby fully authorised to execute a good deed or deeds in fee to the purchaser of the same; and the monies arising by such sale he shall pay out to the several creditors of such absentee within this or other of the united American states, and the remainder, after the said agent is paid his reasonable charges for negotiating the business, he shall pay and deliver to the treasurer of this state, who is to give him two receipts of the same tenor and date, one of which he shall immediately lodge in the office of the secretary of this state.

To empower the judge to nominate agents for absentees.

Said agents to give bond.

To return inventory of goods and estates of said absentees within 3 months to the judge.

Persons to appraise goods, &c.

Dispose of personal estate at auction.

Monies arising from sale thereof to be paid to the treasurer.

SECT. 2. And be it further enacted by the authority aforesaid, that in case the personal estate of the absentee shall be insufficient to pay the debts due from him or her, together with the necessary charges which may arise in transacting the business, the said agent shall sell and dispose of so much of the real estate where the same can best be spared, or will be least prejudicial to the residue, to make up that deficiency.

Personal estate being insufficient to pay debts, agent to dispose of real estate.

Provided always, that no part of the real estate shall be sold, until license be obtained therefor from the superiour or inferiour court; and the justices of the superiour court of judicature at any of their sessions, and the inferiour court of common pleas in the county where the said absent person was an inhabitant at the time of his or her departure as aforesaid, are hereby severally authorised to grant licenses for such sale, when and so often as it shall appear to them by a certificate from the register of the probate court, where such agent is appointed, that the personal estate is insufficient to pay the debts as aforesaid, in the same way and manner they now are by law authorised to grant such license to the executors, or administrators of deceased persons; and the agent is to post notifications thirty days before the sale in manner as administrators or executors now do, and to give the preference to such as will give most for the real estate to be sold.

Justices of superiour court to grant licenses for the sale of real estate.

SECT. 3. And be it further enacted by the authority aforesaid, that every agent appointed as aforesaid, in case the said absentee's estate shall appear insufficient to pay all the debts due therefrom, shall represent the same to the judge of probate, and thereupon the said judge shall appoint two or more fit persons commissioners to receive and examine the claims of the several creditors of such absentee, and how the same are made out; and the said commissioners shall advertise the times and place of their meeting to attend the creditors in such newspaper or newspapers, as the judge of probate in their commission shall direct, and the term of six, twelve or eighteen months, as the circumstances may require, shall be allowed by the judge to the creditors for bringing in and proving their claims, at the end of which limited time the said commissioners shall make their report, and present a list upon oath to the said judge of all such claims as to them upon examination appeared justly due and owing from the absentee, who shall order them meet recompense for their care and trouble therein, and debts due for rates and taxes of every kind, and other debts due to this, or other of the united American states, together with the necessary charges accrued in the agency, being deducted, the residue and remainder the said judge shall order to be paid to and among the creditors, whose claims shall be allowed as aforesaid; and whatever creditor shall not make out his or her claim with such commissioners, before the full expiration of the limited time, shall be barred of his or her debt, in case the said absentee's estate shall be insufficient to pay such claims as the said commissioners shall allow, or unless other estate of the absentee shall be found not inventoried by the agent; and no process in law shall be allowed or maintained against the agent of any absentee's

Judge to appoint commissioners to receive and examine claims of creditors.

To allow six, twelve or eighteen months to the creditors for proving their claims.

insolvent estate, in his said capacity as aforesaid, so long as the same shall be depending as aforesaid.

Judges to allow bedding, &c. for the use of the wife and family of absent persons.

And in case the absent person as aforesaid left a wife behind him, or children, or other domesticks, he was obliged to provide for and support, the judges of probate in their respective counties are authorised and empowered to allow bedding, utensils and implements of household furniture necessary to the upholding life for the use of the wife and family of the absent person, and the same so allowed shall not be accounted assets in said agent's hands, nor be subject to the payment of debts, although the estate prove insolvent, and may also assign to the wife the use and improvement of one third part of the real estate during the absence of the husband. And in cases where the absent person had estate in different counties, the agent appointed as aforesaid shall have the care and management of the estate in each and every county within this state, and may appoint one or more agents under him, for whose conduct he shall be accountable.

Judges to interrogate upon oath any persons suspected to have concealed absentee's effects.

And the judges of probate within their respective counties are hereby fully authorised and empowered to interrogate upon oath any person or persons, that shall be suspected by the said agent or any of the creditors of the absentee to have secreted, concealed, embezzled or conveyed away money, goods, or chattels of the absentee, and to call such suspected person or persons before them for that purpose; and in case such person suspected as aforesaid shall refuse to acquit him or herself on oath before the said judge, the said judge is hereby authorised and empowered to commit such person so refusing to swear unto the gaol of the county, there to remain until he or she shall comply, to discharge him or herself upon oath as aforesaid, or be released by consent of the agent or creditor aforesaid. Saving alway unto any person aggrieved at any sentence, order, decree or denial made by the judge of probate respecting the estate of any absent person as aforesaid, an appeal unto the supreme court of probate for this state, in the same way and manner, he, she or they now may or can appeal from any the judge of probate of wills in any other matter or thing, wherein the same rules are to be observed and kept in the bringing forward, and prosecuting such appeal; and the fees to the judge and register of probate for appointing an agent as aforesaid, and doing other business in their respective offices, respecting the estates of said absentees, shall be similar and equal in all respects to fees that now are or may hereafter be by law allowed in granting administration upon, and settling the estates of intestates, or persons dying insolvent.

To commit to gaol persons refusing to swear.

Agents dying, or incapable, judge to appoint

Sect. 4. And be it further enacted, that in case the agent appointed as aforesaid shall die, or be otherwise rendered incapable of discharging the duties of the agency before the same shall be finished, the said judge may appoint some

other person to finish the same. And the judge of probate may remove any agent by him appointed, for misbehaviour, and appoint another in his place. persons to finish their agency.

And whereas the real estates of such absent persons may have been leased out agreeable to resolutions of this court, nothing in this act shall be construed to revoke or disannul said leases, but the lessees shall have and hold the estates so leased until the terms for which they are leased shall expire, and the stipulated rents shall be paid to and received by the said agents respectively, to be accounted for as other personal estate of such absentees. But in case no agent should be appointed by the tenth day of April, one thousand seven hundred and seventy-seven, then the committee of correspondence, safety and inspection of the town or plantation where the real estate of any such absentee lies shall continue to take the care of such estates, until the appointment of such agent, and may lease out the same for the year ensuing, and also receive the rents which are or may become due for the occupation or improvement of such estates for the terms for which they have been or shall be leased by them. Lessees to hold the estates until the terms shall expire. If no agents appointed by the 10th April, 1777 the committee of correspondence, &c. to take care of said estates.

Provided always, that if any agent shall be appointed before the payment of such rents, such agent alone shall receive the same.

Sect. 5. And be it further enacted by the authority aforesaid, that the agents which shall be appointed as aforesaid, shall be held to account with the judge of probate by whom he shall have been appointed, or his successors in said office, when and so often as the judge shall require, in like manner as executors or administrators are by law obliged to. Agents to account with the judge.

Sect. 6. And be it further enacted by the authority aforesaid, that the agent, or where there is no agent, the committee of correspondence, safety and inspection may make necessary repairs of the buildings or fences upon any such absentee's estate, and shall lay his account thereof before the judge of probate for allowance. Agents to make necessary repairs.

Sect. 7. And be it further enacted by the authority aforesaid, that in all cases where the estate of such absentee is not insolvent, the judge of probate may allow out of the rents and profits thereof, for the better support of such absentee's wife, children and servants, and others whom he is by law obliged to maintain, remaining in this state, and demeaning themselves as faithful subjects thereof, such sum of money as he shall judge reasonable, having respect to their ability to support themselves. Judge to allow rents for the better support of absentee's family.

And whereas some evil disposed persons, taking advantage of the late troubles, have wickedly entered upon estates left as aforesaid, and made strip and waste thereon, and may again be induced to do the like,

To empower agents to pursue actions of trespass.

SECT. 8. Be it therefore further enacted, that the said agents may, and hereby are fully authorised and empowered, in their said capacity, to commence and pursue actions of trespass, trover, detinue or account, against such wrong doers, as fully to every intent and purpose as executors or administrators may, or can in their capacities. [1777.]

CHAPTER XLV.

AN ACT FOR TAKING UP AND RESTRAINING PERSONS DANGEROUS TO THIS STATE.

WHEREAS, at a time when the publick enemy have actually invaded some of our neighbouring states, and threaten an invasion of this state, the safety of the commonwealth requires that a power be somewhere lodged to apprehend and imprison any persons, whose enlargement is dangerous to the community,

Council to issue under the great seal of this state, signed by the president, a warrant to apprehend and commit suspicious persons.

SECT. 1. Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that the council may from time to time issue their warrant under the great seal of this state, signed by the president of the council for the time being, and directed to any sheriff or deputy-sheriff within this state, or to any other person by name, to command and cause to be apprehended and committed to any gaol within this state any person whom the council shall deem the safety of the commonwealth requires should be restrained of his personal liberty, or whose enlargement within this state is dangerous thereto; and the sheriff, deputy-sheriff, or any other person to whom such warrant shall be directed, is hereby authorised and empowered, whenever he shall judge it proper, to require the aid and assistance of such and so many of the subjects of this state in executing the same as he shall judge proper, who are hereby required to give such aid and assistance when thereto requested, under a penalty not less than five pounds, nor exceeding twenty pounds, to be recovered by indictment before the superiour court of judicature, &c. or a court of general sessions of the peace, one moiety thereof to the use of the prosecutor, and the other moiety to the use of this state.

Sheriff empowered to take aid, and penalty in case of refusal.

Sheriff empowered to

SECT. 2. And be it further enacted by the authority aforesaid, that any sheriff, deputy-sheriff or any other person to whom such warrant shall be directed, shall have full power

to break open any dwelling house or other building or apartment, by day or by night, in which they shall suspect any person required to be apprehended by such warrant is concealed, first demanding entrance thereinto if any person should appear. break open houses.

Sect. 3. And be it further enacted by the authority aforesaid, that any person, who shall be apprehended and imprisoned as aforesaid, shall be continued in imprisonment without bail or mainprize, until he shall be discharged therefrom by order of council or of the general court. [1777.] Persons committed to remain in gaol without bail or mainprize.

CHAPTER XLVI.

AN ACT FOR SECURING THIS AND THE OTHER UNITED STATES AGAINST THE DANGER TO WHICH THEY ARE EXPOSED BY THE INTERNAL ENEMIES THEREOF.

Whereas the enemies of this and the united American states are yet vigorously attempting to destroy the liberties, the peace and happiness thereof, and it becoming the indispensable duty of the guardians of each state to exert every nerve to preserve them from impending ruin, and this court, considering that there are some within this state, who, from sordid motives, or from wicked and inveterate dispositions, are secretly endeavouring to counteract the united struggles now making for the preservation and establishment of American liberty, do judge it expedient, that such persons should be prevented from uniting with, or aiding the enemies aforesaid, in carrying into execution the plans adopted for the destruction of their liberties and privileges, do enact,

Sect. 1. And be it accordingly enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that the selectmen of each town, or the committee of each plantation within this state be, and hereby are empowered and directed, immediately on receipt hereof, to warn in the usual manner a meeting of their inhabitants qualified by law to vote in town affairs, to choose by ballot some person, who is firmly attached to the American cause, to procure and lay before the court hereafter described the evidence that may be had of the inimical dispositions towards this or any of the united states of To empower the selectmen or committee to warn a meeting of their inhabitants.

any inhabitant of such town, who shall be charged by the freeholders and other inhabitants of said town, in manner hereafter mentioned, of being a person whose residence in this state is dangerous to the publick peace or safety; and the selectmen at such meeting shall lay before the town a list of all such persons belonging to their town as they shall know or believe have been endeavouring, since the nineteenth of April one thousand seven hundred and seventy-five, to counteract the united struggles of this and the united states for the preservation of their liberties and privileges; and if any freeholder or other person qualified to vote in said meeting shall move to have the name of any other person residing in such town, whom he shall conclude to be of the disposition aforesaid, added to said list, and the motion shall be seconded, the question shall be put by the moderator of said meeting; and if there shall appear a majority of the voters present at said meeting in favour of said motion, the name of such person shall be by the town clerk added to such list accordingly, or the name of any person inserted in said list may by a major vote in the same manner be struck therefrom; and the town clerk shall deliver such list to two or more justices of the peace for said county, quorum unus; and the said justices are hereby required, immediately on receipt of such list, to issue their warrant for apprehending and securing the suspected persons named in said list, so that they may be had before them and such other justices of the peace of the same county as may attend the trial, at a special session of the peace to be held for that purpose, unless when any person shall be charged with being guilty of treason, murder, or any other crime which by the laws of this state is to be punished with death, in which case the said justices shall cause them to be retained in custody according to the former laws, and not proceed with them according to this act until after they shall be acquitted of such charge, which warrant shall be served seven days at least before the day fixed upon by the said justices for holding the court; and the said justices shall at the same time make out an order to the clerk of the court of sessions forthwith to issue a venire facias to the constables of such towns as they shall direct for returning and summoning as many jurors to be appointed in the manner petit jurors for the superiour court are appointed, and to be drawn from the same box, as shall make up a full panel of twelve, to attend before them at the time and place they shall appoint for hearing the charge; and in case the jurors appointed and summoned as aforesaid should not attend to make up the full number of twelve, or a sufficient objection should be made to any of the jurors returned, in the opinion of the justices, to prevent his or their judging on the accusation, in case seven of the original jurors returned remain, then the

Selectmen to lay before the town a list of disaffected persons.

Others to be added or struck out by a vote.

List to be delivered to two justices, quorum unus.

Mode of trial.

Talies to be put on the juries, in case.

said justices shall order the sheriff, deputy-sheriff or constable attending, to return as many others of the bystanders, being freeholders in said county, as shall make up the number of twelve, which jury shall be sworn to return a true verdict according to the evidence upon the charge exhibited against the respondent for being inimical to the interest of this and the American states, without favour, envy, partiality or malice; and in case the jury aforesaid, after hearing the charges against the accused and the evidence adduced to support it, as well as the defence made by the accused, and such evidence as may be produced in his favour, shall return their verdict, that the accused person now is so inimically disposed towards this and the other united states of America, that his further residence in this state is dangerous to the publick peace and safety, then the said justices shall, by warrant directed to some proper officer, cause said person or persons to be immediately sent to the board of war of this state, to be by them sent on board a guardship, which they are hereby empowered and directed to provide for that purpose, or otherwise secure as they shall think proper, until the said board of war can transport such persons off the continent to some part of the West Indies or Europe, those who are able at their own expense, and others at the expense of this state.

To be sworn.

Delinquents to be sent to the board of war to be transported.

SECT. 2. And be it further enacted by the authority aforesaid, that when complaint shall be made to any two of the justices of the peace within this state, whereof one is the quorum, that any person within the county whereof they are justices is evilly disposed to this state, or any of the united states of America, such the justices shall, if they see fit, have full power to issue their warrant to apprehend such evilly disposed person and to bring him to trial, and deal with him in the manner herein before pointed out for the trial of those whose names shall be exhibited in a list by any selectmen, as is provided by this act.

Justices to proceed upon complaint, if they judge it expedient.

SECT. 3. And it is further enacted by the authority aforesaid, that if any person transported as aforesaid shall voluntarily afterwards, during the continuance of the present war, return to this state, without liberty first had and obtained from the general court, he shall on conviction thereof, before the superiour court of judicature, court of assize and general gaol delivery, be adjudged guilty of felony, without benefit of clergy.

Penalty for returning after transportation.

SECT. 4. And be it further enacted by the authority aforesaid, that such persons as may be transported as aforesaid shall be indulged to carry off, at their own expense, their monies and all other personal estate they are possessed of, and not prohibited, in case they shall carry their families with them, deducting so much as shall be sufficient to pay their just debts, and such money or effects as shall appear

Persons transported may carry off their personal estate, in case

to the board of war to belong to other persons; and such as shall leave their families within this state shall be allowed to carry off no more money or goods than shall be by the board of war judged necessary for their immediate support; and any conveyance of real estate by any person after he shall be inserted in such list as aforesaid, without the approbation or allowance of the general court, shall be and hereby is declared null and void, unless the person so making the conveyance shall be on trial acquitted of the charge brought against him; and the expense arising on the trial of any person in consequence of this act shall be paid out of the county treasury, by order of the court of general sessions of the peace, the fees to be taxed as in other cases in the sessions; and the court aforesaid, in case they cannot finish the trial on the day assigned therefor, may adjourn from day to day till the trial shall be finished. This act to be in force till the first day of January next, and no longer. [1777.]

Real estate not to be conveyed after persons are accused, unless.

Fees to be paid by the county.

CHAPTER XLVII.

AN ACT IN ADDITION TO AN ACT, ENTITLED AN ACT TO PREVENT THE WASTE, DESTRUCTION AND EMBEZZLEMENT OF THE GOODS OR ESTATES OF SUCH PERSONS WHO HAVE LEFT THE SAME AND FLED TO OUR ENEMIES FOR PROTECTION, AND ALSO FOR PAYMENT OF THEIR JUST DEBTS OUT OF THEIR ESTATES.

WHEREAS in the act passed anno Domini one thousand seven hundred and seventy-seven, entitled an act to prevent the waste, destruction and embezzlement of the goods or estates of such persons who have left the same and fled to our enemies for protection, and also for payment of their just debts out of their estates, the judges of probate for the several counties within this state are not empowered to appoint agents to the estates of such persons as have left this state and fled to our enemies for protection, unless it shall so appear to them by a certificate from under the hands of the major part of the selectmen or committees of correspondence of the towns where such absent persons were inhabitants, and whereas it is highly necessary that an agent to every such estate be appointed, in order that the further waste and embezzlement thereof may be prevented,

SECT. 1. Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that the judges of probate within the several counties in this state be, and they hereby are empowered, directed and enjoined, as soon as it shall appear to them by information or otherwise, that any person or persons within their respective counties have left this state and fled to our enemies for protection, since the nineteenth day of April in the year of our Lord one thousand seven hundred and seventy-five, leaving within the same real or personal estate of the value of twenty pounds, to appoint some discreet and suitable person, not being a relation to the absent person, agent to every such estate, which agent so appointed shall be under the same rules and restrictions in adjusting and settling said estates, and be accountable for the faithful discharge of their duty, in the same manner as agents are who may or have been appointed by the act to which this is an addition.

Judges of probate empowered to appoint agents to absentees' estates.

And whereas doubts have arisen and may arise respecting the power of the judges of probate to appoint agents to the estates of such persons as have died, since they fled to our enemies for protection, for removal of which,

SECT. 2. Be it further enacted by the authority aforesaid, that it shall be the duty of the judges of probate of the several counties within this state to appoint agents to the estates of all such persons as come within the true intent and meaning of the afore recited act, their death since their removal from this state notwithstanding.

Proviso.

SECT. 3. And be it further enacted by the authority aforesaid, that the judge of probate in each county be, and he is hereby authorised and directed to appoint three or more faithful and judicious persons as commissioners to receive and examine the claims of the several creditors to such absentees, whether it shall appear that such absentees' estates be insufficient to pay all the debts due from them or not, any thing contained in the law to which this is in addition notwithstanding.

Judge of probate to appoint persons to examine claims of creditors.

SECT. 4. And be it further enacted by the authority aforesaid, that any agent appointed as aforesaid, or by virtue of the act aforesaid, shall have the same power and authority over the estate real or personal of which he is agent, if the same lies or shall be found in several counties within this state, as if the same had been within the county where such absentee lived. [September, 1778.]

Agents to have power over the estates real and personal.

CHAPTER XLVIII.

AN ACT TO PREVENT THE RETURN TO THIS STATE OF CERTAIN PERSONS THEREIN NAMED, AND OTHERS WHO HAVE LEFT THIS STATE OR EITHER OF THE UNITED STATES, AND JOINED THE ENEMIES THEREOF.

WHEREAS Thomas Hutchinson, Esq. late governor of this state, Francis Bernard, Esq. formerly governor of this state, Thomas Oliver Esq. late lieutenant governor of this state, Timothy Ruggles, of Hardwick, in the county of Worcester, Esq. William Apthorp, merchant, Gibbs Atkins, cabinet maker, John Atkinson, John Amory, James Anderson, Thomas Apthorp, David Black, William Burton, William Bowes, George Brindley, Robert Blair, Thomas Brindley, James Barrick, merchants, Thomas Brattle, Esq. Sampson Salter Blowers, Esq. James Bruce, Ebenezer Bridgham, Alexander Brymer, Edward Berry, merchants, William Burch, late commissioner of the customs, Esq. Mather Byles, jun. clerk, William Codner, book-keeper, Edward Cox, merchant, Andrew Cazneau, Esq. barrister at law, Henry Canner, clerk, Thomas Courtney, tailor, Richard Clark, Esq. Isaac Clark, physician, Benjamin Church, physician, John Coffin, distiller, John Clark, physician, William Coffin, Esq. Nathaniel Coffin, Esq. Jonathan Clark, merchant, Archibald Cunningham, shopkeeper, Gilbert Deblois, merchant, Lewis Deblois, merchant, Philip Dumaresque, merchant, Benjamin Davis, merchant, John Erving, jun. Esq. George Erving, Esq. Edward Foster and Edward Foster, jun. blacksmiths, Benjamin Faneuil, jun. merchant, Thomas Flucker, Esq. late secretary for Massachusetts bay, Samuel Fitch, Esq. Wilfret Fisher, carter, James Forrest, merchant, Lewis Gray, merchant, Francis Green, merchant, Joseph Green, Esq. Silvester Gardiner, Esq. Harrison Gray, Esq. late treasurer of Massachusetts bay, Harrison Gray, jun. clerk to the treasurer, Joseph Goldthwait, Esq. Martin Gay, founder, John Gore, Esq. Benjamin Hallowell, Esq. Robert Hallowell, Esq. Thomas Hutchinson, jun. Esq. Benjamin Gridley, Esq. Frederick William Geyer, merchant, John Greenlaw, shopkeeper, David Green, merchant, Elisha Hutchinson, Esq. James Hall, mariner, Foster Hutchinson, Esq. Benjamin Mulbury Holmes, distiller, Samuel Hodges, book-keeper, Henry Hulton, Esq. Hawes Hatch, wharfinger, John Joy, housewright, Peter Johonnot, distiller, Wil-

liam Jackson, merchant, John Jeffries, physician, Henry Laughton, merchant, James Henderson, trader, John Hinston, yeoman, Christopher Hatch, mariner, Robert Jarvis, mariner, Richard Leehmere, Esq. Edward Lyde, merchant, Henry Lloyd, Esq. George Leonard, miller, Henry Leddle, bookkeeper, Archibald McNeil, baker, Christopher Minot, tidewaiter, James Murray, Esq. William McAlpine, bookbinder, Thomas Mitchell, mariner, William Martin, Esq. John Knutton, tallow chandler, Thomas Knight, shopkeeper, Samuel Prince, merchant, Adino Paddock, Esq. Charles Paxton, Esq. Sir William Pepperell, baronet, John Powell, Esq. William Lee Perkins, physician, Nathaniel Perkins, Esq. Samuel Quincy, Esq. Owen Richards, tidewaiter, Samuel Rogers, merchant, Jonathan Simpson, Esq. George Spooner, merchant, Edward Stowe, mariner, Richard Smith, merchant, Jonathan Snelling, Esq. Daniel Silsby, trader, Samuel Sewall, Esq. Abraham Savage, tax gatherer, Joseph Scott, Esq. Francis Skinner, clerk to the late council, William Simpson, merchant, Richard Sherwin, saddler, Henry Smith, merchant, John Semple, merchant, Robert Semple, merchant, Thomas Selkrig, merchant, James Selkrig, merchant, Robert Service, trader, Simon Tufts, trader, Arodi Thayer, late marshal to the admiralty court, Nathaniel Taylor, deputy naval officer, John Troutbeck, clerk, Gregory Townsend, Esq. William Taylor, merchant, William Vassal, Esq. Joseph Taylor, merchant, Joshua Upham, Esq. William Walter, clerk, Samuel Waterhouse, merchant, Isaac Winslow, merchant, John Winslow, jun. merchant, David Willis, mariner, Obadiah Whiston, blacksmith, Archibald Wilson, trader, John White, mariner, William Warden, perruke maker, Nathaniel Mills, John Hicks, John Howe and John Fleming, printers, all of Boston, in the county of Suffolk; Robert Auchmuty, Esq. Joshua Loring, Esq. both of Roxbury, in the same county, Samuel Goldsbury, yeoman, of Wrentham, in the county of Suffolk, Joshua Loring, jun. merchant, Nathaniel Hatch, Esq. both of Dorchester, in the same county, William Brown, Esq. Benjamin Pickman, Esq. Samuel Porter, Esq. John Sargeant, trader, all of Salem, in the county of Essex, Richard Saltonstall, Esq. of Haverhill, in the same county, Thomas Roby, trader, Benjamin Marston, merchant, both of Marblehead, in said county of Essex, Moses Badger, clerk, of Haverhill aforesaid, Jonathan Sewall, Esq. John Vassal, Esq. David Phipps, Esq. John Nutting, carpenter, all of Cambridge, in the county of Middlesex, Isaac Royall, Esq. of Medford, in the same county, Henry Barnes, of Marlborough, in said county of Middlesex, merchant, Jeremiah Dummer Rogers, of Littleton, in the same county, Esq. Daniel Bliss, of Concord, in the said county of Middlesex, Esq. Charles Russell, of Lincoln, in the same county, physician, Joseph Adams, of Townsend, in said coun-

ty of Middlesex, physician, Thomas Danforth, of Charlestown, in said county, Esq. Joshua Smith, trader, of Townsend, in said county, Joseph Ashley, jun. gentleman, of Sunderland, Nathaniel Dickenson, gentleman, of Deerfield, Samuel Bliss, shopkeeper, of Greenfield, Roger Dickenson, yeoman, Josiah Pomroy, physician, and Thomas Cutler, gentleman, of Hatfield, Jonathan Bliss, Esq. of Springfield, William Galway, yeoman, of Conway, Elijah Williams, attorney at law, of Deerfield, James Oliver, gentleman, of Conway, all in the county of Hampshire, Pelham Winslow, Esq. Cornelius White, mariner, Edward Winslow, jun, Esq. all of Plymouth, in the county of Plymouth, Peter Oliver, Esq. Peter Oliver, jun. physician, both of Middleborough, in the same county, Josiah Edson, Esq. of Bridgewater, in the said county of Plymouth, lieutenant Daniel Dunbar, of Halifax, in the same county, Charles Curtis, of Scituate, in the said county of Plymouth, gentleman, Nathaniel Ray Thomas, Esq. Israel Tilden, Caleb Carver, Seth Bryant, Benjamin Walker, Gideon Walker, Zera Walker, Adam Hall, tertius, Isaac Joice, Joseph Phillips, Daniel White, jun. Cornelius White, tertius, Melzar Carver, Luke Hall, Thomas Deerow, John Baker, jun. all of Marshfield, in the said county of Plymouth, Gideon White, jun. Daniel Leonard, Esq. Seth Williams, jun. gentleman, Solomon Smith, boatman, all of Taunton, in the county of Bristol, Thomas Gilbert, Esq. Perez Gilbert, Ebenezer Hathaway, jun. Lot Strange, the third, Zebedee Terree, Bradford Gilbert, all of Freetown, in the same county, Joshua Broomer, Shadrach Hathaway, Calvin Hathaway, Luther Hathaway, Henry Tisdel, William Burden, Levi Chace, Shadrack Chace, Richard Holland, Ebenezer Phillips, Samuel Gilbert, gentleman, Thomas Gilbert, jun. yeoman, both of Berkley, in the said county of Bristol, Ammi Chace, Caleb Wheaton, Joshua Wilbore, Lemuel Bourn, gentleman, Thomas Perry, yeoman, David Atkins, labourer, Samuel Perry, mariner, Stephen Perry, labourer, John Blackwell, jun. labourer, Francis Finny, labourer, and Nehemiah Webb, mariner, all of Sandwich, in the county of Barnstable, Eldad Tupper, of Dartmouth, in the county of Bristol, labourer, Silas Perry, labourer, Seth Perry, mariner, Elisha Bourn, gentleman, Thomas Bumpus, yeoman, Ephraim Ellis, jun. yeoman, Edward Bourn, gentleman, Nicholas Cobb, labourer, William Bourn, cordwainer, all of Sandwich, in the county of Barnstable, and Seth Bangs, of Harwich, in the county of Barnstable, mariner, John Chandler, Esq. James Putnam, Esq. Rufus Chandler, gentleman, William Paine, physician, Adam Walker, blacksmith, William Chandler, gentleman, all of Worcester, in the county of Worcester, John Walker, gentleman, David Bush, yeoman, both of Shrewsbury, in the same county, Abijah Willard, Esq. Abel Willard, Esq. Jo-

seph House, yeoman, all of Lancaster, in the said county of Worcester, Ebenezer Cutler, trader, James Eager, yeoman, both of Northborough, in the same county, Daniel Oliver, Esq. Richard Ruggles, yeoman, Gardner Chandler, trader, Joseph Ruggles, gentleman, Nathaniel Ruggles, yeoman, all of Hardwick, in the said county of Worcester, John Ruggles, yeoman, of said Hardwick, John Eager, yeoman, Ebenezer Whipple, Israel Conkay, John Murray, Esq. of Rutland, in said county of Worcester, Daniel Murray, gentleman, Samuel Murray, gentleman, Michael Martin, trader, of Brookfield, in the said county of Worcester, Thomas Beaman, gentleman, of Petersham, in the same county, Nathaniel Chandler, gentleman, John Bowen, gentleman, of Princeton, in the said county of Worcester, James Crage, gentleman, of Oakham, in the same county, Thomas Mullins, blacksmith, of Leominster, in the said county of Worcester, Francis Waldo, Esq, Arthur Savage, Esq. Jeremiah Pote, mariner, Thomas Ross, mariner, James Wildridge, mariner, George Lyde, custom house officer, Robert Pagan, merchant, Thomas Wyer, mariner, Thomas Coulson, merchant, John Wiswall, clerk, Joshua Eldridge, mariner, Thomas Oxnard, merchant, Edward Oxnard, merchant, William Tyng, Esq. John Wright, merchant, Samuel Longfellow, mariner, all of Falmouth, in the county of Cumberland, Charles Callahan, of Pownalborough, in the county of Lincoln, mariner, Jonas Jones, of East Hoosuck, in the county of Berkshire, David Ingersoll, of Great Barrington, in the same county, Esq. Jonathan Prindall, Benjamin Noble, Francis Noble, Elisha Jones, of Pittsfield, in the said county of Berkshire, John Graves, yeoman, Daniel Brewer, yeoman, both of Pittsfield aforesaid, Richard Square, of Lanesborough, in the said county of Berkshire, Ephraim Jones, of East Hoosuck, in the same county, Lewis Hubbel, and many other persons, have left this state, or some other of the united states of America, and joined the enemies thereof and of the united states of America, thereby not only depriving these states of their personal services at a time when they ought to have afforded their utmost aid in defending the said states, against the invasions of a cruel enemy, but manifesting an inimical disposition to the said states, and a design to aid and abet the enemies thereof in their wicked purposes, and whereas many dangers may accrue to this state and the united states, if such persons should be again admitted to reside in this state,

SECT. 1. Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that if the said Thomas Hutchinson, Francis Bernard, Thomas Oliver, Timothy Ruggles, William Apthorp, Gibbs Atkins, John Atkinson, John Amory, James Anderson, Thomas Apthorp, David Black, William Burton, William Bowes, George Brindley, Robert Blair, Enacting clause.

Thomas Brindley, James Barrick, Thomas Brattle, Sampson Salter Blowers, James Bruce, Ebenezer Bridgham, Alexander Brymer, Edward Berry, William Burch, Mather Byles, jun. William Coduer, Edward Cox, Andrew Cazneau, Henry Canner, Thomas Courtney, Richard Clark, Isaac Clark, Benjamin Church, John Coffin. John Clark, William Coffin, Nathaniel Coffin, Jonathan Clark, Archibald Cunningham, Gilbert Deblois. Lewis Deblois, Philip Dumaresque, Benjamin Davis, John Erving, jun. George Erving. Edward Foster, Edward Foster, jun. Benjamin Faneuil, jun. Thomas Flucker, Samuel Fitch, Wilfret Fisher, James Forrest, Lewis Gray, Francis Green, Joseph Green. Silvester Gardiner, Harrison Gray, Harrison Gray, jun, Joseph Goldthwait, Martin Gay, John Gore, Benjamin Hallowell, Robert Hallowell. Thomas Hutchinson, jun. Benjamin Gridley, Frederick William Geyer, John Greenlaw, David Green, Elisha Hutchinson, James Hall, Foster Hutchinson, Benjamin Mulbury Holmes, Samuel Hodges, Henry Hulton, Hawes Hatch, John Joy, Peter Johonnot, William Jackson, John Jeffries, Henry Laughton, James Henderson, John Hinston, Christopher Hatch, Robert Jarvis, Richard Leehmere, Edward Lyde, Henry Lloyd, George Leonard, Henry Leddle, Archibald McNeil, Christopher Minot, James Murray, William McAlpine, Thomas Mitchell, William Martin, John Knutton, Thomas Knight, Samuel Prince, Adino Paddock, Charles Paxton, Sir William Pepperell, John Powell, William Lee Perkins, Nathaniel Perkins, Samuel Quincy, Owen Richards, Samuel Rogers, Jonathan Simpson, George Spooner, Edward Stowe, Richard Smith, Jonathan Snelling. Daniel Silsby, Samuel Sewall, Abraham Savage, Joseph Scott, Francis Skinner, William Simpson, Richard Sherwin, Henry Smith, John Semple, Robert Semple, Thomas Selkrig, James Selkrig, Robert Service, Simon Tufts, Arodi Thayer, Nathaniel Taylor, John Troutbeck, Gregory Townsend, William Taylor, William Vassal, Joseph Taylor, Joshua Upham, William Walter, Samuel Waterhouse, Isaac Winslow, John Winslow, jun. David Willis, Obadiah Whiston, Archibald Wilson, John White, William Warden, Nathaniel Mills, John Hicks, John Howe, John Fleming, Robert Auchmuty, Joshua Loring, Samuel Goldsbury, Joshua Loring, jun. Nathaniel Hatch, William Brown, Benjamin Pickman, Samuel Porter, John Sargeant, Richard Saltonstall, Thomas Roby, Benjamin Marston, Moses Badger, Jonathan Sewall, John Vassal, David Phipps, John Nutting, Isaac Royal, Henry Barnes, Jeremiah Dummer Rogers, Daniel Bliss, Charles Russell, Joseph Adams. Thomas Danforth, Joshua Smith, Joseph Ashley, jun. Nathaniel Dickenson, Samuel Bliss, Roger Dickenson, Josiah Pomroy, Thomas Cutler, Jonathan Bliss, William Galway, Elijah Williams, James Oliver, Pelham Winslow, Cornelius White, Edward Winslow, jun. Peter Oli-

ver, Peter Oliver, jun. Josiah Edson, Daniel Dunbar, Charles Curtis, Nathaniel Ray Thomas, Israel Tilden, Caleb Carver, Seth Bryant, Benjamin Walker, Gideon Walker, Zera Walker, Adam Hall, tertius, Isaac Joice, Joseph Phillips, Daniel White, jun. Cornelius White, tertius, Melzar Carver, Luke Hall, Thomas Deerow, John Baker, jun. Gideon White, jun. Daniel Leonard, Seth Williams, jun. Solomon Smith, Thomas Gilbert, Perez Gilbert, Ebenezer Hathaway, jun. Lot Strange, the third, Zebedee Terree, Bradford Gilbert, Joshua Broomer, Shadrack Hathaway, Calvin Hathaway, Luther Hathaway, Henry Tisdel, William Burden, Levi Chace, Shadrack Chace, Richard Holland, Ebenezer Phillips, Samuel Gilbert, Thomas Gilbert, jun. Ammi Chace, Caleb Wheaton, Joshua Wilbore, Lemuel Bourn, Thomas Perry, David Atkins, Samuel Perry, Stephen Perry, John Blackwell, jun. Francis Finny, Nehemiah Webb, Eldad Tupper, Silas Perry, Seth Perry, Elisha Bourn, Thomas Bumpus, Ephraim Ellis, jun. Edward Bourn, Nicholas Cobb, William Bourn, Seth Bangs, John Chandler, James Putnam, Rufus Chandler, William Paine, Adam Walker, William Chandler, John Walker, David Bush, Abijah Willard, Abel Willard, Joseph House, Ebenezer Cutler, James Eager, Daniel Oliver, Richard Ruggles, Gardner Chandler, Joseph Ruggles, Nathaniel Ruggles, John Ruggles, John Eager, Ebenezer Whipple, Israel Conkay, John Murray, Daniel Murray, Samuel Murray, Michael Martin, Thomas Beaman, Nathaniel Chandler, John Bowen, James Crage, Thomas Mullins, Francis Waldo, Arthur Savage, Jeremiah Pote, Thomas Ross, James Wildridge, George Lyde, Robert Pagan, Thomas Wyer, Thomas Coulson, John Wiswall, Joshua Eldridge, Thomas Oxnard, Edward Oxnard, William Tyng, John Wright, Samuel Longfellow, Charles Callahan, Jonas Jones, David Ingersoll, Jonathan Prindall, Benjamin Noble, Francis Noble, Elisha Jones, John Graves, Daniel Brewer, Richard Square, Ephraim Jones and Lewis Hubbel, or any other person, though not specially named in this act, who have left this state or either of said states and joined the enemies thereof as aforesaid, shall, after the passing this act, voluntarily return to this state, it shall be the duty of the sheriff of the county, and of the selectmen, committees of correspondence, safety and inspection, grand jurors, constables and tythingmen, and other inhabitants of the town wherein such person or persons may presume to come, and they are hereby respectively empowered and directed forthwith to apprehend and carry such person or persons before some justice of the peace within the county, who is hereby required to commit him or them to the common gaol within the county, there in close custody to remain, until he shall be sent out of the state as is hereinafter directed; and such justice is hereby directed to give immediate in-

If return, by whom apprehended.

Imprisoned.

formation thereof to the board of war of this state. And the said board of war are hereby empowered and directed to cause such person or persons so committed, to be transported to some part or place within the dominions, or in the possession of the forces of the king of Great Britain, as soon as may be after receiving such information, those who are able at their own expense, and others at the expense of this state, and for this purpose to hire a vessel or vessels if need be.

Transported.

SECT. 2. And be it further enacted by the authority aforesaid, that if any person or persons, who shall be transported as aforesaid, shall voluntarily return into this state, without liberty first had and obtained from the general court, he shall on conviction thereof before the superiour court of judicature, court of assize and general gaol delivery, suffer the pains of death without benefit of clergy.

Death, if they return.

SECT. 3. And be it further enacted by the authority aforesaid, that if the master of any ship or vessel shall, after the passing of this act, knowingly bring into any port within this state any of the persons above named, or if any person shall wilfully or willingly harbour or conceal any of the persons above named or described, after their return to this state, contrary to the design of this act, such master or person so offending shall on conviction thereof, before the inferiour court of common pleas, in the county where the offence shall be committed, or before the superiour court of judicature, forfeit the sum of five hundred pounds, one half thereof to the use of this state, and the other half to the use of him or them who shall sue for the same.

Penalty for importing or concealing.

SECT. 4. And be it further enacted by the authority aforesaid, that the president of the council be and he hereby is requested to write to the several legislative assemblies in the United States, enclosing a copy of this act, and desiring them to transmit to this assembly, a list of the names of all persons who have left their respective states and joined the enemies of the United States, in order that such persons may be prevented from residing in this state.

President to send copies.

And the secretary is directed to cause this act to be published in the several Boston newspapers and also in handbills, and transmit five hundred copies thereof to the ministers of the United States at the court of France, as soon as may be, who are desired to cause the same to be made publick as soon as may be after they shall have received the same, that so the persons named and described herein may be deterred from attempting to come within this state. [September, 1778.]

Secretary to publish and send to France.

CHAPTER XLIX.

AN ACT IN FURTHER ADDITION TO AN ACT, ENTITLED AN ACT TO PREVENT THE WASTE, DESTRUCTION AND EMBEZZLEMENT OF THE GOODS OR ESTATES OF SUCH PERSONS WHO HAVE LEFT THE SAME, AND FLED TO OUR ENEMIES FOR PROTECTION, AND ALSO FOR PAYMENT OF THEIR JUST DEBTS OUT OF THEIR ESTATES.

WHEREAS it has happened that some persons who have heretofore been appointed administrators of the estates of persons who have died intestate, and others, who have been executors of the last wills and testaments of persons who have died within this state, have left the state, and have joined the enemies thereof, by means whereof the estates, with which such absentees have been entrusted, remain unsettled, and the same circumstances may again take place, for remedy whereof,

Empowering judge of probate of wills, &c. to grant letters of administration on absentees' estates.

Be it enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that when it shall appear to the judge of probate of wills, &c. in any county within this state, where letters of administration have been granted on any intestate estate, or on the will of any person deceased, and such administrator, or the executor, constituted by such will, is absent out of this state, and has voluntarily joined the enemies thereof, such judge is hereby authorized and empowered to grant letters of administration of the estate of such person deceased intestate, not already administered, in like manner as though such absent administrator had been naturally dead; and also to grant letters of administration, with the will annexed, in like manner as he might have done in case such absent executor was naturally dead intestate. [February, 1779.]

CHAPTER L.

AN ACT TO PREVENT SUNDRY ARTICLES BEING EXPORTED FROM THIS TO THE NEIGHBOURING STATES.

WHEREAS this state are using their utmost endeavours to appreciate the currency of the United States, and there is great danger that their laudable exertions will be entirely defeated, if measures are not speedily taken to prevent the inhabitants of this and of the other united states, from conveying the necessary articles of consumption out of this state,

Non-exportation of certain articles by land or water, after the 23d of September instant.

SECT. 1. Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that no exportation be permitted of rum, wine, or any kind of spirits, molasses, sugar, cotton wool, sheep's wool, wool cards, flax, salt, coffee, cocoa, chocolate, linen, cotton and linen, woollen and cotton goods of all kinds, provisions of all and every sort, live stock, shoes, skins and leather of all kinds, either by land or by water, from any part of this state, after the twenty-third day of September instant, to be carried to any place not within this state, and except reasonable ship stores.

Selectmen or committees, empowered to stop teams, unless.

SECT. 2. And be it further enacted by the authority aforesaid, that if the selectmen or committees of correspondence of any towns or plantations within this state shall suspect that any team is loaded with any articles herein before enumerated, to be transported out of this state to any of the united states, the said selectmen or committees are hereby empowered and directed to stop all such teams till they shall obtain satisfactory evidence, that the same are not designed to be carried out of this state, which evidence shall arise from the certificate of the selectmen or committee of correspondence of the town or place within this state, to which the teamster of any goods, or driver of any kind of live stock belongs; which certificate shall be in the words following, viz.

Form of a certificate.

These may certify that the team and load, or cattle, sheep, swine or horses (as the case may be) drove by teamster or teamsters, driver or drivers, (as the case may be) of the town of is or are driving the same to the town of in the county of within this state, for the use of the inhabitants thereof, and the same

is or are not to be carried or drove out of said state. Witness our hands,

} Selectmen or committee of

And if satisfactory evidence as aforesaid shall not be given within thirty days after detention thereof, the selectmen or committees of correspondence so detaining the same are hereby empowered and directed to seize such articles and the team, if they are so conveyed, and having so done, shall make application to the state's attorney, or any person appointed to act in his room, who is directed to file an information against them before the court of general sessions of the peace, next to be holden in any county where said articles shall be stopped, or seized; and the said court shall have full power to try the justice of said seizure, by a jury, and in case the said court shall judge and condemn the same as forfeited, after the legal charges of prosecution are paid, one fourth part shall be to the use of the state attorney that managed the cause, and the remaining part, one half of it shall be to the use of the said selectmen or committees aforesaid, the other half to the use of the poor of the town or plantation to which said selectmen or committees aforesaid belong.

Evidence not being given within 30 days, selectmen empowered to seize.

Court of general sessions to try the justice of the said seizure, and in case.

Provided notwithstanding, that when any person shall transport any articles whatever to the American army or navy, and shall produce a certificate signed by the board of war in the county of Suffolk, or by Mr. Daniel Noyes, in the county of Essex, or by Mr. David Bemus, in the county of Middlesex, or by Mr. Nathan Baldwin, in the county of Worcester, or by major William Pynchon and Mr. Simeon Alexander, in the county of Hampshire, or by William Watson, Esq. in the county of Plymouth, or by James Williams, Esq. in the county of Bristol, or by captain William Taylor, in the county of Barnstable, or by colonel John Brown and Mr. Moses Hopkins, in the county of Berkshire, or by Daniel Moulton, Esq. in the county of York, or by colonel John Wait, in the county of Cumberland, or by colonel Dummer Sewall, in the county of Lincoln, certifying that the goods he has in his custody belong either to the continent or this state, in such case the person with such goods may proceed unmolested, taking care to leave his permit with any one of the above committee that lives nearest the state said goods are next to pass into, otherwise it shall be deemed that the person so conveying goods had no permit, and he shall be subject to the penalties provided by this act.

Proviso.

SECT. 3. And be it further enacted by the authority aforesaid, that if it shall hereafter appear that any of the articles herein before enumerated had been transported out of this state contrary to the true intent and meaning of this

Articles transported contrary to this act, owners to

forfeit the value of such goods.

How recovered.

act, the owner, or any person carrying the same, shall forfeit the value of such goods, to be recovered by a special action of the case in any court proper to try the same, and after paying the charges of prosecution, one half thereof shall be to the person or persons who shall sue for the same, the other half to the use of this state, provided the action is commenced in three months after the goods are transported. [September, 1779.]

CHAPTER LI.

AN ACT IN ADDITION TO AN ACT, ENTITLED AN ACT TO PREVENT SUNDRY ARTICLES BEING EXPORTED FROM THIS TO THE NEIGHBOURING STATES.

WHEREAS the act, entitled an act to prevent sundry articles being exported from this to the neighbouring states, made and passed the present session, hath been found insufficient to answer the purposes for which it was designed,

All kinds of teas, steel or hats prohibited to be exported out of this state after the 10th of October inst.

SECT. 1. Be it therefore enacted by the council and house of representatives, in general court assembled, and by the authority of the same, that from and after the tenth day of October instant, no bohea or any other India teas, any sort of steel, or any kind of hats, be permitted to be exported, either by land or water, from any part of this state to any place not within the limits of the same, except reasonable ship stores; and that when any of the articles herein prohibited as aforesaid, or any of those enumerated in the act to which this is in addition, shall be seized by the selectmen or committees of correspondence of any town or plantation within this state, agreeable to the directions in the said act contained, unless the teamster, driver, or person under whose direction the same shall be, will make oath before some justice of peace within this state, that such articles or effects are not intended to be carried out of this state, or will produce to such selectmen or committee such certificate as is in the act to which this is in addition directed, that such goods or articles were not designed to be carried out of this state, all and every such article or articles, with the team, carriage, boat or vessel carrying or conveying the same, are hereby declared to be forfeited for the purposes in the said act mentioned; and all such selectmen

Selectmen or committees directed to seize articles prohibited by this act, unless the teamster make oath, &c.

or committees are hereby empowered to stop, seize and proceed with all or any of the articles herein enumerated in the same manner as they are directed to do in like circumstances with any of the articles in the said act enumerated, and are in like manner directed to stop, seize and proceed with any of the articles therein or herein enumerated, which shall be laden on board any vessel or boat, in any port or harbour in the town they belong to, of which they shall have the like suspicion and the like failure of evidence; and such selectmen or committees are hereby empowered and directed, whenever they shall stop any such articles, teams, vessel or boat, as mentioned in this or the act to which this is in addition, to take proper care of and secure such articles at the expense of the owner or owners, or teamster, or boatman, in such manner as they shall judge safe and proper, till satisfactory evidence as aforesaid shall be given them, or until the justice of the seizure shall be tried and determined.

And whereas divers persons, inhabitants of this and the neighbouring states, have imported into this state, before the passing of the said act, sundry articles of provisions with an intention to export from the same some of the articles therein or herein enumerated, and no provision is made in the said act for the same,

Persons being inhabitants of the neighbouring states permitted to transport imported articles.

SECT. 2. Be it therefore further enacted by the authority aforesaid, that any person or persons, being inhabitants of this or any of the neighbouring states, who have imported or brought, or shall import or bring into this state any kind of provisions, every such person or persons shall, and hereby are permitted to export out of this state any of the articles enumerated in said act, or in this act, provided such person or persons shall make oath before some magistrate of this state, that the article or articles by him or them were imported since the first day of August last, were sold at the prices agreed upon by the late convention at Concord, and that the articles so to be exported were purchased at the prices agreed upon by the late convention at Concord, and do not amount at that rate to more than he or they sold the article by him or them imported for, and the persons appointed in each county to give certificates are hereby directed to give all such persons permits to export the same upon being properly certified that such person or persons have made oath as aforesaid.

Proviso.

SECT. 3. And it is hereby further enacted, that all and every person or persons, who are inhabitants of any of the neighbouring states, and shall have imported into this state by water since the first day of August last any of the articles enumerated in said act, or in this act, or shall hereafter import into this state by water any of said articles, such person or persons shall and hereby are permitted to export

the same out of this state, any thing in this act or the act aforesaid to the contrary notwithstanding.

Proviso. Provided, such person or persons shall obtain a permit from any of the persons in the respective counties in this state appointed to give certificates, who are hereby authorised to grant such permits, upon being properly certified that such person or persons have made oath before some magistrate of this state, that such articles were by him or them imported into this state since the first day of August last, and that he was not at the time of such importation nor is now an inhabitant of this state.

Provided, that nothing in this act, or that to which this is in addition, shall be construed to extend to such persons as are or may be removing with his, her or their families and effects to any place without the limits of this state, such person so removing producing a certificate from any of the persons in the respective counties appointed by this court to grant certificates that such is the case. [October, 1779.]

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